TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 407

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

ALICE M. RAMSEY, C. L. KING, AND L. D. HADLEY

No. 408

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

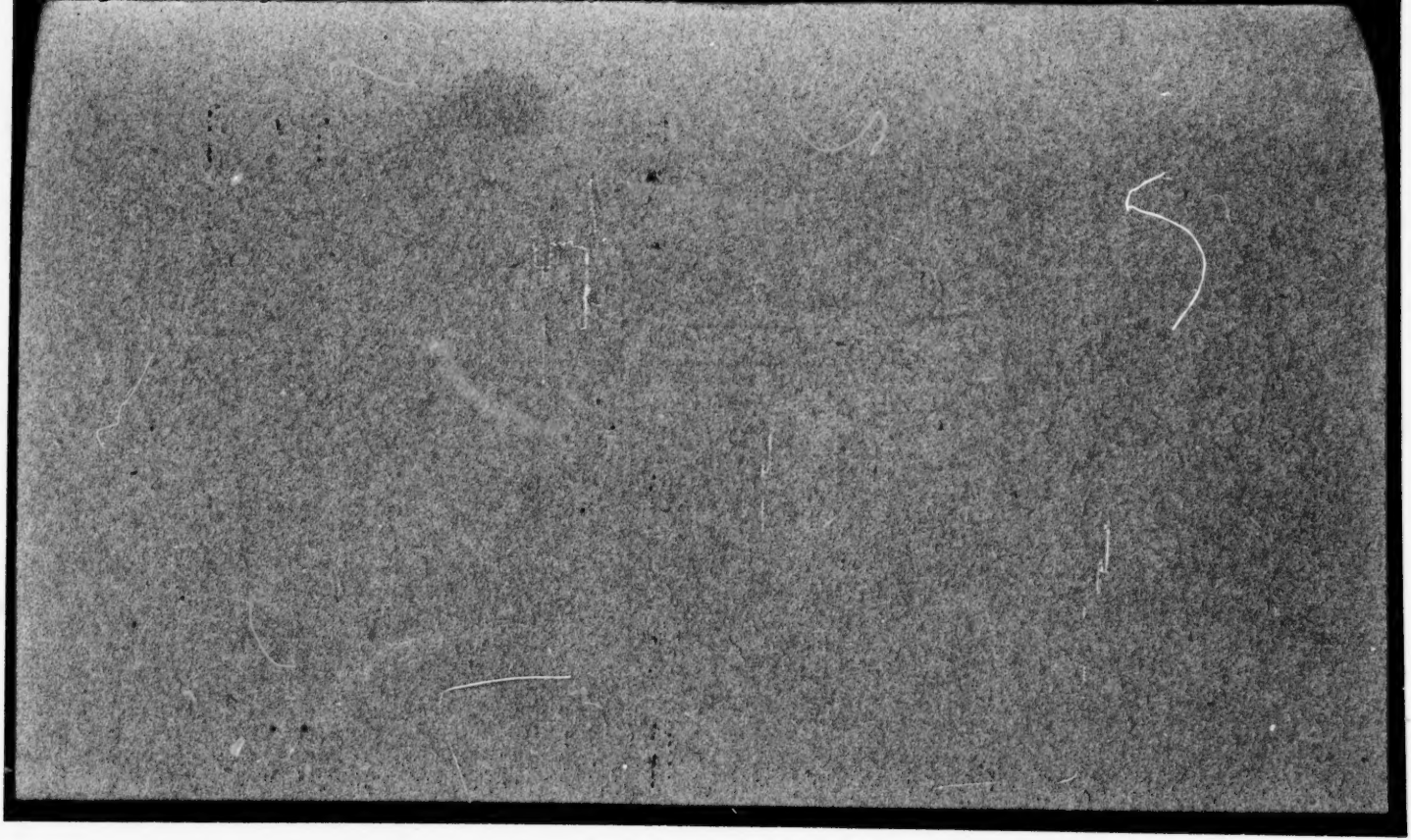
vs.

ALICE M. RAMSEY, C. L. KING, H. F. FERRY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

FILED JULY 30, 1927

(32,859, 32,860)



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[fol. 1] **IN SUPREME COURT OF KANSAS**

No. 27109

G. L. Ramsey, Appellant,

vs.

E. F. Adams, et al., Appellee

Abstract of Record from District Court of Butler County

Statement of the Case

This action was commenced in the District Court of Butler County, Kansas, by the plaintiff, to recover against the defendants as officers and directors of the Butler County State Bank, of El Dorado, Kansas, certain deposits claimed to have been made by the plaintiff in said bank at a time when said bank was insolvent or in a failing condition, such officers and directors assenting to the reception of such deposits with knowledge of the insolvent or failing condition of said bank.

The case was tried to a jury and a verdict rendered in favor of the plaintiff and against the defendants, C. L. King, A. B. Ewing, L. D. Hadley, and H. F. Ferry.

As to the defendants E. F. Adams and G. W. Lyon, the court sustained a demurrer to the plaintiff's evidence.

The jury returned a verdict for costs in favor of defendant C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased.

[fol. 2] Properly speaking when the case was originally filed T. A. Kramer was made defendant and before trial he died, and C. L. Harris, executor of his last will and testament, was substituted as defendant.

Judgment was rendered on the verdict in favor of the plaintiff and against the defendant C. L. King, A. B. Ewing,

L. D. Hadley and H. F. Ferry and each of them for the sum of $19,374.34 with interest thereon at six per cent from the 27th day of March, 1926, together with the costs of the case and judgment was rendered on the verdict for costs in favor of the defendant C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased.

From the judgment rendered on the verdict in favor of said C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, the plaintiff appeals and also appeals from the judgment of the court sustaining the demurrer of the defendant E. F. Adams to the plaintiff's evidence.

From the judgment rendered in favor of the plaintiff the defendants C. L. King, A. B. Ewing, L. D. Hadley and H. F. Ferry appeal.

The defendant E. F. Adams appeals from all rulings and decisions made and had in the case adverse to her as against all defendants.

After the rendition of the judgment in the above entitled case a case identical in character and against the same identical defendants but in which the Ramsey Petroleum Company was plaintiff was tried to the court on the general evidence offered in the case tried to the jury and such supplemental evidence as in accordance with the stipulation of the parties made in the case, was offered and judgment was rendered in such case in favor of the Ramsey Pe- [fol. 3] troleum Company and against the defendants, King, Ewing, Hadley and Ferry, for the sum of $27,211.96 with interest at six percent from the 12th day of April, 1926 and the costs of the case and judgment was rendered in favor of the defendant C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, for costs and judgment was rendered by the court sustaining the demurrer of the defendants E. F. Adams and G. W. Lyon to the plaintiff's evidence.

In this case as in the case of G. L. Ramsey versus E. F. Adams, et al., similar appeals have been taken by the parties and in this court bear numbers 27,213; 27,217; and 27,230.

Under an order of court heretofore made all appeals in these two cases are consolidated for hearing.

No appeal is taken by the plaintiff in either case as against the judgment sustaining the demurrer of the defendant G. W. Lyon to the plaintiff's evidence.

On the 30 day of March, 1923, the Butler County State Bank of El Dorado, Kansas, was and for more than two years prior thereto had been and still is a banking corporation organized under the laws of the State of Kansas and doing business at El Dorado, Kansas. The defendant C. L. King was and for a long time prior to such date had been, its president and a member of the board of directors; the defendant H. F. Ferry was and for a long time prior to such date had been, its vice-president, cashier and a member of the board of directors; the defendant L. D. Hadley was and for a long time prior thereto, — its assistant cashier and a member of the board of directors; the defendant A. B. Ewing, G. W. Lyon, and T. A. Kramer were and for a long time prior to such date had been, directors of said bank.

[fol. 4] The plaintiff claimed that the defendant E. F. Adams on such date and for a long time prior thereto had been held out and represented by said bank as an officer and director thereof, and had knowingly permitted and allowed herself to be so held out and represented.

On the 30 day of March, 1923, a bank commissioner of the State of Kansas took charge and control of said bank and closed its doors and placed a representative of the banking department in charge of said bank and after said bank commissioner had examined into the affairs of said bank it was found to be insolvent and a receiver was appointed for said bank by such bank commissioner and the process of liquidation of the bank commenced.

The plaintiff charged in his amended petition in substance that on the 8th day of March, 1923, he had in a checking account in said bank the sum of $2,168.85; that on the 8th day of March, 1923, he deposited in said bank in said account the sum of $40,000.00 and on the 12th day of March, 1923, $1,411.17 and on the 13th day of March, 1923, $1,600.00 and on the 26th day of March, 1923, the sum of $3,615.60 and that of such deposits so made there remained on the 30th day of March, 1923, in said account when said bank was closed by the bank commissioner the sum of $22,726.16.

The plaintiff further charged that the defendants were officers and directors of said bank at the time such deposits were made and that said bank at said times and for more than six months prior to March 30th, 1923, was insolvent

and in failing circumstances and that the defendants and each of them at said time knew that said bank was in said [fol. 5] condition or could have ascertained such fact by making such an examination into the affairs of said bank as it was their duty to do and that said defendants with knowledge of the condition of said bank assented to the reception of such deposits and judgment was prayed for in the sum of $22,726.16 with six per cent interest from March 30th, 1923, and for costs and for general relief.

In the case of The Ramsey Petroleum Company against the same defendants the plaintiff charged in its amended petition that on the 13th day of March, 1923, it had on deposit in a general checking account in the Butler County State Bank, the sum of $7,397.57 and that it deposited in said account in said bank on March 13, 1923, $5,071.88 and on March 15th, 1923, the sum of $2,917.27 and on March 16th, 1923, the sum of $12.53 and on March 23, 1923, the sum of $2,835.39 and on March 26th, 1923, the sum of $6,866.37 and on March 27th, 1923, $13,965.55 and that on the 30th day of March, 1923, at the time said bank was closed by said bank commissioner of such deposits there remained in said account in said bank $31,582.98, and that such deposits were made in said bank under the same conditions as charged in the amended petition in the G. L. Ramsey case.

In each of the cases the plaintiff charged as against the defendant E. F. Adams that she had held herself out to be a vice-president and director of said bank to the depositors and had knowingly permitted and allowed herself to be so held out and had permitted her name to be carried upon the stationary used by said bank as a vice-president and had permitted her name to be listed in various bank directories as a vice-president and a director of said bank.

The Ramsey Petroleum Company asked judgment for said sum of $31,582.98 with six per cent interest from March 30th, 1923.

[fol. 6] Pleadings

AMENDED PETITION

Omitting the caption and signatures, the plaintiff's amended petition is in words and figures as follows:

Now comes the plaintiff and in accordance with the order of the court heretofore made, files his amended petition in this action, and alleges and says:

1. Plaintiff says that The Butler County State Bank, at all the times hereinafter named, was a corporation duly and legally organized, existing and doing business under the laws of the State of Kansas, and a banking institution engaged in the general banking business at El Dorado, Butler County, Kansas.

2. Plaintiff says that the defendants and each of them were stockholders of said bank and the said C. L. King defendant was an officer, director and president of said bank on the 30th day of March, A. D. 1923, and for more than three months prior thereto; that the defendant H. F. Ferry was an officer, director, vice-president and cashier of said bank on the 30th day of March, A. D. 1923, and for more than three months prior thereto; that the defendant L. D. Hadley was an officer, director and assistant cashier of said bank on the 30th day of March, 1923, and for more than three months prior thereto; that the defendants A. B. Ewing, G. W. Lyon and T. A. Kramer were directors of said bank on the 30th day of March, A. D. 1923 and for more than three months prior thereto; that on the 30th day of March, 1923, and for more than two years prior thereto, the defendant, E. F. Adams, held herself out to [fol. 7] be and represented herself to be a vice-president and director of said bank to the depositors and customers of said bank, and knowingly permitted and allowed herself to be so held out and so represented to be such director and vice-president of said bank by the said bank directors and officers during all of said time by having and permitting her name to be carried upon the stationery, used by said bank directors and officers, as a vice-president of said bank and by having and knowingly permitting her name to be listed by the directors and officers of said bank upon the

books and records of said bank as vice-president and director of said bank, and by advertising and permitting advertisements to be carried in divers and different bank directors and bank registers, the names of all of which directories and registers plaintiff is unable to state, but among which are Rand and McNally's Bank Directory and Bank Register for the years 1921, 1922 and 1923 and American Bank Reporter for the years 1921 and 1922, in which registers said defendant E. F. Adams was advertised and held out to be a director and vice-president of said The Butler County State Bank and that said defendants and each of them as such officers and directors actively participated in the management of the affairs of said bank.

3. Plaintiff alleges that on the 8th day of March, 1923, he had on deposit in said the Butler County State Bank, the sum $2,168.85 in a checking account; that on the 8th day of March, 1923, he deposited in said bank the sum of $40,000.00 in said account, and on the said date checked out of said account in said bank, the sum of $17,751.36; that thereafter and on the 12th day of March, 1923, he deposited in said bank in said account the further sum of $1,411.17; and that [fol. 8] on the 13th day of March, 1923, he deposited in said bank in said account the further sum of $1,600.00; that on the 16th day of March, 1923 he checked out of said account in said bank the sum of $8,294.35; and that on the 17th day of March, 1923, he checked out of said account in said bank, the sum of $23.75; that on the 26th day of March, 1923, he deposited in said account in said bank, the sum of $3,615.60; and that said banking institution received said deposits and each of them, and upon receipt of such deposits and each of them, credited the same to the account of this plaintiff in and upon the records of said banking institution and thereby became and was indebted to the plaintiff to the amount of said deposits so named.

4. Plaintiff avers that at the time he deposited said sums the said bank was insolvent and in failing circumstances. That said bank was insolvent and in failing circumstances for more than six months prior to March 30th, 1923 and that said defendants and each of them knew at the time said deposits were made and for more than six months prior to March 30th, 1923, had known that said bank was in

said condition, or by an examination into the affairs of said bank—which it was their duty to make—they could have ascertained such fact, and the plaintiff had no knowledge of the actual condition of said bank until the same was closed, as hereinafter set forth.

5. Plaintiff avers that defendants and each of them, notwithstanding their knowledge and means of knowledge, assented to the bank receiving the said deposits as hereinbefore stated.

6. Plaintiff avers that on the 30th day of March, 1923, the said bank was closed by the State Bank Commissioner [fol. 9] of the State of Kansas, and on that date suspended payment of its obligations, and that on such date there remained of the deposit so made, the sum of $22,726.16 unpaid, and that there is now due this plaintiff thereon, $22,726.16 with interest at the rate of six (6) per cent per annum from the 30th day of March, 1923; and that by reason of the premises hereinbefore set forth, there is now due this plaintiff from said defendants and each of them, the sum of $22,726.16 and interest as aforesaid.

7. Plaintiff alleges that since the commencement of this action, T. A. Kramer, defendant herein, died at the City of East St. Louis, in the State of Illinois, and that C. L. Harris since the death of said T. A. Kramer, was by the Probate Court of Butler County, Kansas, duly appointed the executor of the last will and testament and estate of said T. A. Kramer, deceased, and that said C. L. Harris, accepted the said appointment and duly and legally qualified as such by filing his bond, which was approved by the said court, and his oath of office, and is now the duly and legally appointed, qualified and acting executor of the last will and testament and estate of T. A. Kramer, deceased.

Wherefore, plaintiff prays judgment against the said defendants and each of them for the sum of $22,726.16 together with interest thereon at the rate of six (6) per cent per annum from the 30th day of March, 1923, and for costs and for general relief.

Separate Demurrers to Amended Petition

Omitting the caption and signatures the separate demurrers of defendants to the plaintiff's amended petition are in words and figures as follows:

[fol. 10] Separate Demurrer of Defendant H. F. Ferry

Comes now the defendant H. F. Ferry and demurs to the amended petition of the plaintiff filed herein for the reasons following, to-wit:

1

That this court has no jurisdiction of the person of this defendant or the subject of this action.

2

That the plaintiff has no legal capacity to sue.

3

That several causes of action are improperly joined.

4

That the amended petition does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against this defendant.

Demurrer

Now comes the defendant, L. D. Hadley, and demurs to plaintiff's petition for the reasons:

1. That the court has no jurisdiction of the person of the plaintiff or the subject of the action.

2. That the plaintiff has no legal capacity to sue.

3. That several causes of action are improperly joined.

4. That the petition does not state facts sufficient to constitute a cause of action.

[fol. 11] Separate Demurrer of Defendant A. B. Ewing

Comes now the defendant A. B. Ewing and demurs to the amended petition of the plaintiff filed herein for the reasons following, to-wit:

1

That this court has no jurisdiction of the person of this defendant or the subject of this action.

2

That the plaintiff has no legal capacity to sue.

3

That several causes of action are improperly joined.

4

That the amended petition does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against this defendant.

Separate Demurrer of Defendant C. L. King

Comes now the defendant C. L. King and demurs to the amended petition of the plaintiff filed herein for the reasons following, to-wit:

1

That this court has no jurisdiction of the person of this defendant or the subject of this action.

2

That the plaintiff has no legal capacity to sue.

[fol. 12]

3

That several causes of action are improperly joined.

4

That the amended petition does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against this defendant.

Separate Demurrer of Defendant E. F. Adams

Comes now the defendant E. F. Adams and demurs to the amended petition of the plaintiff filed herein for the reasons following, to-wit:

1

That this court has no jurisdiction of the person of this defendant or the subject of this action.

2

That the plaintiff has no legal capacity to sue.

3

That several causes of action are improperly joined.

4

That the amended petition does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against this defendant.

[fol. 13] Separate Demurrer of Defendant C. L. Harris, Executor of the Last Will and Testament of T. A. Kramer, Deceased

Comes now C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, and demurs to the amended petition of the plaintiff filed herein for the following reasons, to-wit:

First

That the plaintiff has no legal capacity to sue.

Second

That several causes of action are improperly joined.

Third

That the amended petition does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against this defendant.

Memo. of Order Overruling Demurrers

The various demurrers of the defendants to plaintiff's amended petition were overruled by the court.

Answers of Defendants

Omitting the signatures and caption the answers of defendants filed herein are as follows:

Separate Answer of Defendant A. B. Ewing

Comes now the defendant A. B. Ewing and for his answer to the amended petition of the plaintiff filed herein, alleges as follows:

[fol. 14] 1

That he admits that at all times mentioned in the amended petition The Butler County State Bank was a corporation duly and legally organized, and existing and doing business as a State Bank in El Dorado, Kansas.

2

That he admits that at all times mentioned in the amended petition he was a director of said bank.

3

That save and except as herein specifically admitted, he denies each and every material allegation, statement and averment contained in said amended petition which concern or affect the rights of this defendant.

4

That this defendant denies that the bank was insolvent or in failing circumstances at any of the times alleged in the amended petition on which it is alleged that various deposits were made and denies that said bank was insolvent or in failing circumstances for more than six months prior to March 30, 1923, and denies that at any of said times he knew said bank was in a failing condition or insolvent, and denies that by an examination into the affairs of said bank at any of said times he could have ascertained that said bank was insolvent or in failing circumstances, and denies that he assented to the reception of any such alleged deposits knowing that said bank was insolvent or in failing circumstances.

[fol. 15] 5

This defendant further answering says that at the time of the alleged deposits set out in plaintiff's amended petition and for many years prior thereto, and up to the date of the closing of the same, said The Butler County State Bank was what is known as a "guaranteed" bank, operating under Article Two, Chapter Nine, Revised Statutes of Kansas of 1923, known as the Bank Guaranty Law, and the depositors of such bank were entitled to participate in the fund created thereby and known as the depositors' guaranty fund, and that after the closing of said bank by the bank commissioner as alleged in plaintiff's amended petition, the plaintiff made proof of his claim as required by said act and made and filed his application for a certificate to be issued to him under the provisions of said act, guaranteeing his said alleged deposits, and entitling him to participate in the guarantee fund to the extent of said alleged deposits, and thereafter and prior to the commencement of this action, the plaintiff received the said certificate so applied for. That said certificate is and was negotiable and interest bearing, and that said plaintiff by applying for and receiving said certificate made an election of remedies and thereby elected to take under said guaranty law, and has lost and waived his right, if any he had, which this defendant denies, to maintain any action against this defendant, and is precluded thereby from seeking to recover anything from this defendant. This defendant further says that said certificate heretofore mentioned was and is negotiable as hereinbefore set out, and this defendant does not know and has no means of knowing whether said plaintiff has negotiated said certificate, and whether he is the [fol. 16] owner and holder thereof and therefore alleges that said plaintiff is not now the holder and owner of said certificate.

6

Further answering, this defendant says that there has been declared by the proper persons in charge of said bank out of the assets of said bank a dividend of twenty per cent on all deposits of said bank, and that said twenty per cent on all amounts which the plaintiff had on deposit in said bank has been paid to and received by him or by the owner and holder of the aforesaid certificate.

7

That at and during all times mentioned in the amended petition, said The Bulter County State Bank was, as hereinbefore alleged, operating as a state bank under the laws of the state of Kansas, and as a state bank was run, managed and operated under the control and supervision of the bank commissioner of the state of Kansas. That said bank commissioner and his deputies visted said bank from time to time and made full and careful investigation and inquiry into the condition of its affairs, and said bank commissioner at and during all times mentioned in the amended petition did know the condition of the affairs of said bank, and that said bank at all times mentioned in the amended petition and prior to March 30, 1923, was run and operated with the full knowledge and approval of said bank commissioner. [fol. 17] Further answering, this defendant alleges and says that section 9-163 of Article 1, Chapter 9, of the Revised Statutes of Kansas, 1923, under which this action is brought, and which seeks to impose liability upon a president, director, manager, cashier or other officer of any banking institution for deposits received after he shall have knowledge of the fact that such bank is insolvent or in failing circumstances is in violation of the Fourteenth Amendment of the Constitution of the United States of America, in that it seeks to deprive such persons or proper-y without due process of law, and in that it seeks to deprive and will if enforced deprive this defendant of his property without due process of law, and in that it denies to this defendant in the jurisdiction of the state of Kansas equal protection of the law. This defendant further states that said section above mentioned of the statutes of the state of Kansas is violative of section 5 of the Bill of Rights of the Constitution of the State of Kansas in that it seeks to and will if enforced deprive this defendant of the right to trial by jury in this cause and on a material issue in said cause on which he is entitled under the common law to trial by jury.

9

This defendant further alleges and says that section 9-164 of Article 1, Chapter 9, Revised Statutes of Kansas, 1923, is violative of the Fourteenth Amendment of the

Constitution of the United States of America, in that it seeks to deprive such persons of property without due process of law, and in that it denies to this defendant in the jurisdiction of the State of Kansas equal protection of the [fol. 18] law. This defendant further states that said section above mentioned of the statutes of the state of Kansas is violative of Section 5 of the Bill of Rights of the Constitution of the State of Kansas in that it seeks to and will if enforced deprive this defendant of the right to trial by jury in this cause and on a material issue in said cause on which he is entitled under the common law to trial by jury.

Wherefore, having fully answered, this defendant prays that the plaintiff take nothing and that this defendant go hence without day and judgment for his costs herein.

SEPARATE ANSWER OF DEFENDANT C. L. KING

Comes now the defendant C. L. King and for his answer to the amended petition of the plaintiff filed herein, alleges as follows:

1

That he admits that at all times mentioned in the amended petition The Butler County State Bank was a corporation duly and legally organized, existing and doing business as as state bank in El Dorado, Kansas.

2

That he admits that at all times mentioned in the amended petition, he was a director and president of said bank.

3

That save and except as herein specifically admitted, he denies each and every material allegation, statement and averment contained in said amended petition which concern [fol. 19] or affect the rights of this defendant.

4

That this defendant denies that the said bank was insolvent or in failing circumstances at any of the time- alleged

in the amended petition on which it is alleged that various deposits were made and denies that said bank was insolvent or in failing circumstances for more than six months prior to March 30, 1923, and denies that at any of said times he knew said bank was in a failing condition or insolvent and denies that by an examination into the affairs of said bank at any of said times he could have ascertained that said bank was insolvent or in failing circumstances, and denies that he assented to the reception of any such alleged deposits knowing that said bank was insolvent or in failing circumstances.

5

This defendant further answering says that at the time of the alleged deposits set out in plaintiff's amended petition and for many years prior thereto, and up to the date of the closing of the same, said The Butler County State Bank was what is known as a "guaranteed" bank, operating under Article Two, Chapter Nine, Revised Statutes of Kansas of 1923, known as the Bank Guaranty Law, and the depositors of such bank were entitled to participate in the fund created thereby and known as the depositors' guaranty fund, and that after the closing of said bank by the bank commissioner as alleged in plaintiff's amended petition, the plaintiff made proof of his claim as required by said act and made and filed his application for a certificate [fol. 20] to be issued to him under the provisions of said act, guaranteeing his said alleged deposits, and entitling him to participate in the guarantee fund to the extent of said alleged deposits, and thereafter and prior to the commencement of this action, the plaintiff received the said certificate so applied for. That said certificate is and was negotiable and interest bearing, (and that said plaintiff by applying for and receiving said certificate made an election of remedies and thereby elected to take under said guaranty law, and has lost and waived his right, if any he had, which this defendant denies, to maintain any action against this defendant, and is precluded thereby from seeking to recover anything from this defendant.) This defendant further says that said certificate heretofore mentioned was and is negotiable as hereinbefore set out, and this defendant does not know and has no means of knowing whether said plain-

tiff has negotiated said certificate, and whether he is the owner and holder thereof and therefore alleges that said plaintiff is not now the holder and owner of said certificate.

6

Further answering, this defendant says that there has been declared by the proper persons in charge of said bank out of the assets of said bank a dividend of twenty per cent on all deposits of said bank, and that said twenty per cent on all amounts which the plaintiff had on deposit in said bank has been paid to and received by him or by the owner and holder of the aforesaid certificate.

[fol. 21] 7

That at and during all times mentioned in the amended petition, said The Butler County State Bank was, as hereinbefore alleged, operating as a state bank under the laws of the state of Kansas, and as a state bank was run, managed and operated under the control and supervision of the bank commissioner of the state of Kansas. That said bank com-issioner and his deputies visited said bank from time to time and made full and careful investigation and inquiry into the condition of its affairs, and said bank commissioner at and during all times mentioned in the amended petition did know the condition of the affairs of said bank, and that said bank at all times mentioned in the amended petition and prior to March 30, 1923, was run and operated with the full knowledge and approval of said bank commissioner.

8

Further answering, this defendant alleges and says that section 9-163 of Article 1, Chapter 9, of the Revised Statutes of Kansas, 1923, under which this action is brought, and which seeks to impose liability upon a president, director, manager, cashier or other officer of any banking institution for deposits received after he shall have knowledge of the fact that such bank is insolvent or in failing circumstances is in violation of the Fourteenth Amendment of the Constitution of the United States of America, in that it seeks to deprive such persons of property without due

process of law, and in that it seeks to deprive and will if enforced deprive this defendant of his property without due process of law, and in that it denies to this defendant in the jurisdiction of the State of Kansas equal protection [fol. 22] of the law. This defendant further states that said section above mentioned of the statutes of the state of Kansas is violative of section 5 of the Bill of Rights of the Constitution of the State of Kansas in that it seeks to and will if enforced deprive this defendant of the right to trial by jury in this cause and on a material issue in said cause on which he is entitled under the common law to trial by jury.

9

This defendant further alleges and says that section 9-164 of Article 1, Chapter 9, Revised Statutes of Kansas, 1923, is violative of the Fourteenth Amendment of the Constitution of the United States of America, in that it seeks to deprive such persons of property without due process of law, and in that it denies to this defendant in the jurisdiction of the State of Kansas equal protection of the law. This defendant further states that said section above mentioned of the statutes of the state of Kansas is violative of Section 5 of the Bill of Rights of the Constitution of the State of Kansas in that it seeks to and will if enforced deprive this defendant of the right to trial by jury in this cause and on a material issue in said cause on which he is entitled under the common law to trial by jury.

Wherefore, having fully answered, this defendant prays that the plaintiff take nothing and that this defendant go hence without day and judgment for his costs herein.

SEPARATE ANSWER OF DEFENDANT H. F. FERRY

Comes now the defendant H. F. Ferry and for his answer to the amended petition of the plaintiff filed herein, alleges as follows:

[fol. 23] 1

That he admits that at all times mentioned in the amended petition The Butler County State Bank was a corporation

duly and legally organized, existing and doing business as a state bank in El Dorado, Kansas.

2

That he admits that at all times mentioned in the amended petition, he was a director, vice-president and cashier of said bank.

3

That save and except as herein specifically admitted, he denies each and every material allegation, statement and averment contained in said amended petition which concern or affect the rights of this defendant.

4

That this defendant denies that the said bank was insolvent or in failing circumstances at any of the times alleged in the amended petition on which it is alleged that various deposits were made and denies that said bank was insolvent or in failing circumstances for more than six months prior to March 30, 1923, and denies that at any of said times he knew said bank was in a failing condition or insolvent, and denies that by an examination into the affairs of said bank at any of said times he could have ascertained that said bank was insolvent or in failing circumstances, and denies that he assented to the reception of any such alleged deposits knowing that said bank was insolvent or in failing circumstances.

[fol. 24] 5

This defendant further answering says that at the time of the alleged deposits set out in plaintiff's amended petition and for many years prior thereto, and up to the date of the closing of the same, said The Butler County State Bank was what is known as a "guaranteed" bank, operating under Article Two, Chapter Nine, Revised Statutes of Kansas, of 1923, known as the Bank Guaranty Law, and the depositors of such bank were entitled to participate in the fund created thereby and known as the depositors' guaranty fund, and that after the closing of said bank by the

bank commisioner as alleged in plaintiff's amended petition, the plaintiff made proof of his claim as required by said act and made and filed his application for a certificate to be issued to him under the provisions of said act, guaranteeing his said alleged deposits, and entitling him to participate in the guarantee fund to the extent of said alleged deposits, and thereafter and prior to the commencement of this action, the plaintiff received the said certificate so applied for. That said certificate is and was negotiable and interest bearing, and that said plaintiff by applying for and receiving said certificate made an election of remedies and thereby elected to take under said guaranty law, and has lost and waived his right, if any he had, which this defendant denies, to maintain any action against this defendant, and is precluded thereby from seeking to recover anything from this defendant. This defendant further says that said certificate heretofore mentioned was and is negotiable as hereinbefore set out, and this defendant does not know and has no means of knowing whether said plaintiff has negotiated said certificate, and whether he is [fol. 25] the owner and holder thereof and therefore alleges that said plaintiff is not now the holder and owner of said certificate.

6

Further answering, this defendant says that there has been declared by the proper persons in charge of said bank out of the assets of said bank a dividend of twenty per cent on all deposits of said bank, and that said twenty per cent on all amounts which the plaintiff had on deposit in said bank has been paid to and received by him or by the owner and holder of the aforesaid certificate.

7

That at and during all times mentioned in the amended petition, said The Butler County State Bank was, as hereinbefore alleged, operating as a state bank under the laws of the state of Kansas, and as a state bank was run, managed and operated under the control and supervision of the bank commissioner of the state of Kansas. That said bank commissioner and his deputies visited said bank from time to time and made full and careful investigation and inquiry

into the conditions of its affairs, and said bank commissioner at and during all times mentioned in the amended petition did know the condition of the affairs of said bank, and that said bank at all times mentioned in the amended petition and prior to March 30, 1923, was run and operated with the full knowledge and approval of said bank commissioner.

[fol. 26] 8

Further answering, this defendant alleges and says that section 9-163 of Article 1, Chapter 9, of the Revised Statutes of Kansas, 1923, under which this action is brought, and which seeks to impose liablity upon a president, director, manager, cashier or other officer of any banking institution for deposits received after he shall have knowledge of the fact that such bank is insolvent or in failing circumstances is in violation of the Fourteenth Amendment of the Constitution of the United States of America, in that it seeks to deprive such persons of property without due process of law, and in that it seeks to deprive and will if enforced deprive this defendant of his property without due process of law, and in that it denies to this defendant in the jurisdiction of the State of Kansas equal protection of the law. This defendant further states that said section above mentioned of the statutes of the State of Kansas is violative of section 5 of the Bill of Rights of the Constitution of the State of Kansas in that it seeks to and will if enforced deprive this defendant of the right to trial by jury in this cause and on a material issue in said cause on which he is entitled under the common law to trial by jury.

9

This defendant further alleges and says that section 9-164 of Article 1, Chapter 9, Revised Statutes of Kansas, 1923, is violative of the Fourteenth Amendment of the Constitution of the United States of America, in that it seeks to deprive such persons of property without due process of law, and in that it denies to this defendant in the jurisdic- [fol. 27] tion of the State of Kansas equal protection of the law. This defendant further states that said section above mentioned of the Statutes of the State of Kansas is

violative of Section 5 of the Bill of Rights of the Constitution of the State of Kansas in that it seeks to and will if enforced deprive this defendant of the right to trial by jury in this cause and on a material issue in said cause on which he is entitled under the common law to trial by jury.

Wherefore, having fully answered, this defendant prays that the plaintiff take nothing and that this defendant go hence without day and judgment for his costs herein.

SEPARATE ANSWER OF DEFENDANT E. F. ADAMS

Comes now the defendant E. F. Adams and for her answer to the amended petition of the plaintiff filed herein, alleges as follows:

1

That she admits that at all times mentioned in the amended petition The Butler County State Bank was a corporation duly and legally organized, existing and doing business as a state bank in El Dorado, Kansas.

2

That save and except as herein specifically admitted, she denies each and every material allegation, statement and averment contained in said amended petition which concern or affect the rights of this defendant.

3

This defendant specifically denies that on March 30, 1923 and for more than two years prior thereto, or at any of the [fol. 28] times mentioned in the amended petition, she was or held herself out to be, or represented herself to be a vice-president or director of said bank, to the depositors or customers of said bank or to any person or persons whomsoever and specifically denies that she knowingly permitted or allowed herself to be so held out or so represented to be a director or vice-president of said bank by the said bank directors and officers at any of said times, and specifically denies that she knowingly permitted or allowed her name

to be carried upon the stationery used by said bank directors and officers as a vice-president or director of said bank, and specifically denies that she knowingly permitted or allowed her name to be listed by the directors and officers of said bank as a vice-president or director of said bank upon the books and records of said bank, and specifically denies that she knowingly permitted or allowed her name to be advertised in bank directories or bank registers as a vice-president or director of said bank, and specifically denies that she at any of the times mentioned in the petition participated in the management of the affairs of said bank. This defendant further alleges that for some time prior to the 16th day of November, 1920, she was a stockholder in said bank and a director and vice-president thereof, but that on said date, she sold and transferred all her stock and thereupon ceased to be eligible to be a director or officer of said bank and that she thereupon resigned as director and vice-president of said bank and was not thereafter elected to any office in said bank and was not thereafter an officer either de jure or de facto of said bank or in any manner connected with said bank, save and except as an ordinary depositor; and further alleges that from and after the date of the sale of her stock as aforesaid, she did not in any manner or by [fol. 29] any means participate in the management of the affairs of said bank. This defendant further alleges that at all times mentioned in the amended petition there were legally elected, qualified and acting de jure directors and other officers of said bank for all offices provided for by law and the laws of said bank.

4

This defendant denies that at any time prior to March 30, 1923 she knew said bank was insolvent or in failing circumstances, and denies that she made any examination into the affairs of said bank after she ceased to be a director thereof as above set forth, and denies that it was her duty to make any such examination, and denies that such an examination by her would have disclosed the said bank to have been insolvent or in failing circumstances, and denies that she ever assented to the reception of plaintiff's deposits or had anything to do with such deposits or with the plaintiff's

transaction with said bank, and denies that she ever owed the plaintiff any duty in the premises.

5

This defendant further answering says that at the time of the alleged deposits set out in plaintiff's amended petition and for many years prior thereto, and up to the date of the closing of the same, said The Butler County State Bank was what is known as a "guaranteed" bank, operating under Article Two, Chapter Nine, Revised Statutes of Kansas of 1923, known as the Bank Guaranty Law, and the depositors of such bank were entitled to participate in the fund created thereby and known as the depositor's guaranty fund, and that after the closing of said bank by the bank commissioner as alleged in plaintiff's amended pe- [fol. 30] tition, the plaintiff made proof of his claim as required by said act and made and filed his application for a certificate to be issued to him under the provisions of said act, guaranteeing his said alleged deposits, and entitling him to participate in the guarantee fund to the extent of said alleged deposits, and thereafter and prior to the commencement of this action, the plaintiff received the said certificate so applied for. That said certificate is and was negotiable and interest bearing, and that said plaintiff by applying for and receiving said certificate made an election of remedies and thereby elected to take under said guaranty law, and has lost and waived his right, if any he had, which this defendant, denies, to maintain any action against this defendant, and is precluded thereby from seeking to recover anything from this defendant. This defendant further says that said certificate heretofore mentioned was and is negotiable as hereinbefore set out, and this defendant does not know and has no means of knowing whether said plaintiff has negotiated said certificate, and whether he is the owner and holder thereof and therefore alleges that said plaintiff is not now the holder and owner of said certificate.

6

Further answering, this defendant says that there has been declared by the proper persons in charge of said bank out of the assets of said bank, a dividend of twenty per cent

on all deposits of said bank, and that said twenty per cent on all amounts which the plaintiff had on deposit in said bank has been paid to and received by plaintiff or by the owner and holder of the aforesaid certificate.

[fol. 31] 7

Further answering, this defendant alleges and says that section 9-163 of Article 1, Chapter 9, of the Revised Statutes of Kansas, 1923, under which this action is brought, and which seeks to impose liability upon a president, director, manager, cashier or other officer of any banking institution for deposts received after he shall have knowledge of the fact that such bank is insolvent or in failing circumstances is in violation of the Fourteenth Amend-*ed*- of the Constitution of the United States of America, in that it seeks to deprive such persons of property without due process of law, and in that it seeks to deprive and will if enforced, de prive this defendant of her property without due process of law, and in that it denies to this defendant in the jurisdiction of the State of Kansas equal protection of the law. This defendant further states that said section above mentioned of the statutes of the state of Kansas is violative of section 5 of the Bill of Rights of the Constitution of the State of Kansas in that it seeks to and will if enforced deprive this defendant of the right to trial by jury in this cause and on a material issue in said cause on which she is entitled under the comomn law to trial by jury.

8

This defendant further alleges and says that Section 9-164 of Article 1, Chapter 9, Revised Statutes of Kansas, 1923, is violative of the Fourteenth Amendment of the Constitution of the United States of America, in that it seeks to deprive such persons of property without due process of law, and in that it seeks to and will if enforced [fol. 32] deny to this defendant in the jurisdiction of the State of Kansas equal protection of the law. This defendant further states that said section above mentioned of the statutes of the State of Kansas is violative of Section 5 of the Bill of Rights of the Constitution of the State of

Kansas in that it seeks to and will if enforced deprive this defendant of the right to trial by jury in this cause and on a material issue in said cause on which she is entitled under the common law to trial by jury.

Wherefore, having fully answered, this defendant prays that the plaintiff take nothing and that this defendant go hence without day and judgment for her costs herein.

IN THE DISTRICT COURT OF BUTLER COUNTY, KANSAS

SEPARATE ANSWER OF DEFENDANT C. L. HARRIS, EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED

Comes now the defendant, C. L. Harris as executor of the last will and testament of T. A. Kramer, deceased, and for his answer to the amended petition filed herein alleges as follows:

1

That he admits that at all times mentioned in the amended petition The Butler County State Bank was a corporation duly and legally organized, existing and doing business as a State Bank in El Dorado, Kansas.

2

That he admits that he is the duly appointed, qualified and acting executor of the last will and testament of T. A. Kramer, deceased.

[fol. 33]

3

That save and except as herein specifically admitted, he denies each and every material allegation, statement and averment contained in said amended petition which concern or affect the rights of this defendant.

4

That this defendant denies that the said bank was insolvent or in failing circumstances at any of the times alleged

in the amended petition on which it is alleged that various deposits were made, and denies that said bank was insolvent or in failing circumstances for more than six months prior to March 30th, 1923, and denies that at any of said times said T. A. Kramer knew said bank was in a failing condition or insolvent, and denies that by an examination into the affairs of said bank at any of said times said T. A. Kramer could have ascertained that said bank was insolvent and in failing circumstances, and denies that said T. A. Kramer assented to the reception of any such alleged deposits knowing that said bank was insolvent or in failing circumstances, and denies that T. A. Kramer at any time participated in the active conduct and management of the affairs of said bank, except in connection with such duties as he may have performed from time to time as a director of said bank.

5

And further answering this defendant alleges that T. A. Kramer, prior to the 10th day of July, 1922, and about the — day of August, 1918 lived in the State of California, and on said last mentioned date and while still in California was taken sick with obstruction of the bowels and [fol. 34] was compelled to and did undergo a severe surgical abdominal operation, from the result of which he never fully recovered, and on or about the — day of May, 1920 he returned to El Dorado, Kansas, where he was again compelled by an aggravated recurrence of said trouble to undergo another serious abdominal operation, and was by reason thereof unable to attend to any business, and was confined to the hospital where the operation was performed for a period of about three weeks, and after his discharge from the hospital was sick and enfeebled by reason of such condition, and never fully recovered therefrom. That on or about the 10th day of July, 1922, being still enfeebled and in poor health, he left El Dorado on a trip for the purpose of rest and recuperation, and went to East St. Louis, Illinois, where he remained with his brother R. J. Kramer until July 23rd, 1922, when, still seeking rest and recuperation, he left with his brother, J. H. Kramer, for an Eastern trip, and on August 15th, 1922, when near the City of Boston, Massachusetts, he had an attack of complete bowel

obstruction which entirely prevented the passage of fecal matter through the bowels, and was immediately taken to the Commonwealth Avenue Hospital and placed in charge of competent surgeons, and on August 16th, 1922, he underwent a surgical operation for this trouble which was performed by Dr. Henry M. Chase of Boston. His abdomen was open- and it was found that the small intestines were completely obstructed by a large number of adhesions, and that the small intestines were ruptured and it was impossible to release all the adhesions. That the rupture of the small intestines never healed but remained open during the remainder of his life, and the incision in his abdo- [fol. 35] men made in such operation remained open during the rest of his life. That for a time after said operation it was impossible for him to take nourishment in the usual way, and it became necessary to give him nourishment through the opening in the bowels.

That from the 16th day of August, 1922 until the time of his death, which occurred July, 1923, he had what is known as a fecal fistula at the place where the incision was made for the operation, and during all the remainder of his life fecal matter from the small intestines constantly passed from the opening and inflamed the wound and flesh about the wound, and caused him great and constant pain and suffering. For some time after said operation he was sick and hovered between life and death with little hope of recovery, and afterwards, and on September 4th, 1922, his condition became so serious that it became necessary to perform another abdominal operation, and such operation was performed and restrictions of the bowels at different places were removed so far as it was possible to remove the same, but it was impossible to remove all of such restrictions. In this operation another opening was made through the abdominal walls over the cecem in the illic cecal region. That on account of his weakened physical condition it was impossible at this operation to give him an anesthetic, and in the performance of this operation a local anesthetic, called novocain, was used. After this operation he remained very sick and weak for more than a month, but finally gained sufficient strength so that by the middle of October, 1922 he was able to sit in a chair and move about the room without assistance.

That on or about the first day of November, 1922, while he was still suffering greatly, it was determined best to [fol. 36] remove him from said hospital and to take him to East St. Louis, Illinois to the home of his brother, R. J. Kramer, where he might be among his relatives, and where he might receive and could receive and would receive the personal care and attention which he required.

That during his trip from Boston to East St. Louis he had to remain in his berth in the drawing room under the constant care of his nurse. That after he arrived at East St. Louis he regained sufficient strength to enable him to walk about a little in the room, but this lasted for only two or three days. That he remained in East St. Louis until he died thereon the 23rd day of July, 1923. That during all the time he was in East St. Louis, except the period of two or three days above mentioned, he was confined to his bed, except for short periods during which he was able to sit up in his chair when placed therein by his attendant.

That during all the time from the first operation until the time of his death he was under the care of surgeons and physicians and two nurses.

That about the middle of December, 1922 it became apparent to his physicians that another operation was necessary, and he was thereupon removed to the Deaconess Hospital in East St. Louis, and on December 20, 1922 another abdominal operation was perfomed, to-wit: The abdomen was opened at the outer border of the left rectus muscle, and the small intestine was anastomosed with the large intestine, and it was then discovered that it was impossible to release or remove all the adhesions binding the small intestines. That after this operation his condition did not improve, and the fistula before mentioned did not heal. That he remained at said hospital about a month, when he [fol. 37] was again taken back to the home of his brother in East St. Louis, where his condition gradually grew worse until the date of his death.

That from the time of his first operation until the time of his death, by reason of his sickness, suffering and physical conditions he was unable to attend to any business of importance. That he suffered all the time intense and severe pain. That by reason of his condition he was unable to return to El Dorado at any time from the date of his first

operation, on August 16th, 1922. That his suffering was so intense, his physical condition of such a character and nature and so affected him that it was impossible for him to direct his mind for any length of time to any business matter, or to give any attention to any business affairs at any time, and he was unable to concentrate his mind for any length of time on any of his affairs.

That by reason of the facts and circumstances above set forth it was impossible for him to give any attention to the affairs of said Butler County State Bank, and during all of said period he had no access to the books and records of said bank and was in no condition physically or mentally to make any examination of the business or the condition of said bank, and it was impossible for him to assent to the acceptance of any deposits in said bank. That during all the period of his illness as above described he was constantly attended by his brothers and their families, and acting under the advice of his physicians all matters of business were kept from him so far as possible as to prevent him from worrying over the same and injuring his health thereby. That it would have been impossible for him to give any serious attention or consideration to business matters without seriously injuring his health and shortening his life.

[fol. 38] 6

This defendant further answering says that at the time of the alleged deposits set out in plaintiff's amended petition and for many years prior thereto, and up to the date of the closing of the same, said The Butler County State Bank was what is known as a "guaranteed" bank, operating under Article Two, Chapter Nine, Revised Statutes of Kansas of 1923, known as the Bank Guaranty Law, and the depositors of such bank were entitled to participate in the fund created thereby and known as the Depositors' Guaranty Fund, and that after the closing of said bank by the Bank Commissioner as alleged in plaintiff's petition, the plaintiff made proof of his claim as required by said act and made and filed his application for a certificate to be issued to him under the provisions of said act, guaranteeing his said alleged deposits, and entitling him to participate in the guarantee fund to the extent of said alleged de-

posits, and thereafter and prior to the commencement of this action, the plaintiff received the said certificate so applied for. That said certificate is and was negotiable and interest bearing, and that said plaintiff by applying for and receiving said certificate made an election of remedies and thereby elected to take under said guaranty law, and has lost and waived his right, if any he had, which this defendant denies, to maintain any action against this defendant, and is precluded thereby from seeking to recover anything from this defendant. This defendant further says that said certificate heretofore mentioned was and is negotiable as hereinbefore set out, and this defendant does not know and has no means of knowing whether said plaintiff has negotiated said certificate, and whether he is the owner and [fol. 39] holder thereof, and therefore alleges that said plaintiff is not now the holder and owner of said certificate.

7

Further answering, this defendant says that there has been declared by the proper persons in charge of said bank out of the assets of said bank a dividend of twenty per cent on all deposits of said bank, and that said twenty per cent on all amounts which the plaintiff had on deposit in said bank has been paid and received by him or by the owner and holder of the aforementioned certificate.

8

That at and during all times mentioned in the amended petition, said The Butler County State Bank was, as hereinbefore alleged, operating as a State Bank under the Laws of the State of Kansas, and as a State Bank was run, managed and operated under the control and supervision of the Bank Commissioner of the State of Kansas. That said Bank Commissioner and his deputies visited said Bank from time to time and made full and careful investigation and inquiry into the condition of its affairs, and said Bank Commissioner at and during all times mentioned in the amended petition did know the condition of the affairs of said bank, and that said bank at all times mentioned in said amended petition and prior to March 30th, 1923, was run and operated with the full knowledge and approval of said Bank Commissioner.

9

Further answering, this defendant alleges and says that Section 9-163 of Article 1, Chapter 9, of the Revised [fol. 40] Statutes of Kansas, 1923, under which this action is brought, and which seeks to impose liability upon a president, director, manager, cashier or other officer of any banking institution for deposits received after he shall have knowledge of the fact that such bank is insolvent or in failing circumstances, is in violation of the Fourteenth Amendment of the Constitution of the United States of America, in that it seeks to deprive such persons of property without due process of law, and in that it seeks to deprive, and will if enforced deprive this defendant of his property without due process of law, and in that it denies to this defendant in the jurisdiction of the State of Kansas equal protection of the law. This defendant further states that said section above mentioned of the Statutes of the State of Kansas is violative of Section 5 of the Bill of Rights of the Constitution of the State of Kansas in that it seeks to and will if enforced deprive this defendant of the right to trial by jury in this cause and on a material issue in said cause on which he is entitled under the common law to trial by jury.

10

This defendant further alleges and says that Section 9-164 of Article 1, Chapter 9, Revised Statutes of Kansas, 1923, is violative of the Fourteenth Amendment of the Constitution of the United States of America, in that it seeks to deprive such persons of property without due process of law, and in that it denies to this defendant in the jurisdiction of the State of Kansas equal protection of the law. This defendant further states that said section above mentioned of the statutes of the State of Kansas is violative of Section 5 of the Bill of Rights of the Constitution of the [fol. 41] State of Kansas in that it seeks to and will if enforced deprive this defendant of the right to trial by jury in this cause and on a material issue in said cause on which he is entitled under the common law to trial by jury.

Wherefore, having fully answered, this defendant prays the judgment of the court that plaintiff take nothing against him by reason of this action, and that this defendant recover his costs.

SEPARATE ANSWER OF DEFENDANT L. D. HADLEY

Comes now the defendant, L. D. Hadley, and for his separate answer to the petition of the plaintiff filed herein, alleges and states:

1

That he denies each and every allegation in said petition contained, except as hereinafter expressly admitted.

2

That this defendant denies that the said bank was insolvent or in failing circumstances at any of the times alleged in the amended petition on which it is alleged that various deposits were made and denies that said bank was insolvent or in failing circumstances for more than six months prior to March 30, 1923, and denies that at any of said time- he knew said bank was in a failing condition or insolvent and denies that by an examination into the affairs of said bank at any of said times he could have ascertained that said bank was insolvent or in failing circumstances, and denies that he assented to the reception of any such alleged deposits knowing that said bank was insolvent or in failing circumstances.

[fol. 42] That he admits that he held the position of assistant cashier from July 2, 1917, to March 30, 1923. That there were transferred to him on the 4th day of January, 1921, five shares of stock of the bank belonging to J. B. Adams; that he never paid anything for said stock and when the double assessment was made upon said stock by the Bank Commissioner, the assessment was paid by the estate of J. B. Adams. That while he was named as a director of said bank, he at no time took any active part in the management of the affairs of said bank. That he had no control whatever as a director over the affairs of said bank; that he was not notified of directors' meetings and was not recognized by the officers and other directors of said bank as having any authority to act as a director. That the position of assistant cashier did not constitute him an officer of said bank within the meaning of R. S. 9-163 and 9-164, being Section- 1 and 2 of Chapter 47 Laws of Kansas, 1879.

4

This defendant further answering says that at the time of the alleged deposits set out in plaintiff's amended petition and for many years prior thereto, and up to the date of the closing of the same, The Butler County State Bank was what is known as a "guaranteed" bank, operating under Article Two, Chapter Nine, Revised Statutes of Kansas of 1923, known as the Bank Guaranty Law, and the depositors of such bank were entitled to participate in the fund created thereby and known as the depositors' guaranty fund, and that after the closing of said bank by the bank commissioner as alleged in plaintiff's amended petition, the plaintiff [fol. 43] made proof of his claim as required by said act and made and filed his application for a certificate to be issued to him under the provisions of said act, guaranteeing his said alleged deposits, and entitling him to participate in the guarantee fund to the extent of said alleged deposits and thereafter and prior to the commencement of this action, the plaintiff received the said certificate so applied for. That said certificate is and was negotiable and interest bearing, and that said plaintiff by applying for and receiving said certificate made an election of remedies and thereby elected to take under said guaranty law, and has lost and waived his right if any he had which this defendant denies, to maintain any action against this defendant, and is precluded thereby from seeking to recover anything from this defendant. This defendant further says that said certificate heretofore mentioned was and is negotiable as hereinbefore set out, and this defendant does not know and has no means of knowing whether said plaintiff has negotiated said certificate, and whether he is the owner and holder thereof and therefore alleges that said plaintiff is now the holder and owner of said certificate.

5

Further answering, this defendant says that there has been declared by the proper persons in charge of said bank out of the assets of said bank, a dividend of twenty per cent on all deposits of said bank, and that said twenty per cent on all amounts which the plaintiff had on deposit in said

bank has been paid to and received by him or by the owner and holder of the aforesaid certificate.

[fol. 44] 6

That at and during all times mentioned in the amended petition, said The Butler County State Bank was, as hereinbefore alleged, operated as a state bank under the laws of the State of Kansas, and as a state bank was run, managed and operated under the control and supervision of the bank commissioner of the State of Kansas. That said bank commissioner and his deputies visited said bank from time to time and made full and careful investigation and inquiry into the condition of its affairs, and said bank commissioner at and during all times mentioned in the amended petition did know the condition of the affairs of said bank, and that said bank at all times mentioned in the amended petition and prior to March 30, 1923, was run and operated with the full knowledge and approval of said bank commissioner.

7

For further defense, this defendant alleges that the officers of said bank notified the bank commissioner of the State of Kansas that they desired him to take charge of and examine said bank; that the bank commissioner of the State of Kansas, after making an examination of the same took charge thereof, but directed that said bank be kept open and operated as a solvent bank, until the 30th day of March, 1923, when said bank commissioner took charge thereof, and during all of said period the bank commissioner kept in close touch with the affairs of said bank and had the same examined from time to time and declared said bank to be a solvent bank, and authorized and acquiesced in the acceptance of deposits including the deposits herein involved.

[fol. 45] 8

That on or about the 8th day of March, 1921 the Bank Commissioner of the State of Kansas supervised the affairs of the said Butler County State Bank, and from said date until said bank was formally closed was in charge of and had control thereof. At the time of the reception of the

deposits referred to in plaintiff's petition, said bank was actually in the custody and control of the Bank Commissioner of the State of Kansas, and was being operated by him, he having theretofore taken charge of said bank. That at the time of the reception of the deposits referred to in plaintiff's petition, this defendant was in fact an employee of the Bank Commissioner of the State of Kansas and acting under his supervision and control, and in the reception of said deposits (if he did receive any) did not act as a director or officer of the Butler County State Bank. That said deposits were received pursuant to the direction and assent of the Bank Commissioner of the State of Kansass, and not with the assent of the directors or officers of the said banking institution.

9

For further defense this defendant alleges and says that Section 1, Chapter 47, Laws of Kansas, 1879, being R. S. 9-163 (Revised Statues of Kansas, 1923) is unconstitutional and void in that it attempts to take the property of this defendant without due process of law and denies to this defendant the equal protection of the law, all in violation of the Fourteenth Amendment of the Constitution of the United States and in violation of Section One, of the Bill of Rights of the State of Kansas. That said section under which this action is instituted and which seeks to im-[fol. 46] pose liability upon a president, director, manager, cashier or other officer of any banking institution for deposits received after he shall have knowledge of the fact that such bank is insolvent or in failing circumstances, contains the following provision:

"And it is hereby made the duty of every such officer, agent, or manager of such banking institution to examine into the affairs of the same and if possible, know its condition and upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank or that it was in failing circumstances."

That said section is unconstitutional and void in that it is unjust and unreasonable, is a purely arbitrary enactment of the State Legislature, which, upon failure of the defendant to examine into the affairs of said bank, makes it con-

clusive that he had knowledge of the alleged insolvency of said bank, although an examination of said bank would not have disclosed its true condition or insolvency, if it was insolvent, thereby depriving him of all opportunity to submit to the jury in his defense all of the facts bearing upon the issues therein, and to establish lack of knowledge on his part of insolvency of said bank, (if it was insolvent, and to establish the lack of opportunity or ability on his part to make such examination as would disclose the true condition of said bank at the times herein involved, and to establish that an examination of the affairs of said bank would have disclosed its true condition or insolvency (if it was insolvent). That by reason of the foregoing, this defendant is deprived of the defense he would otherwise have except for such unconstitutional provision; that the same deprives [fol. 47] this defendant of his right to a trial by jury in this cause on a material issue on which under the common law, this defendant is entitled to a trial by jury.

That the alleged liability of this defendant in the cause herein is based upon the acceptance of deposits with the knowledge of the insolvency of the banking institution, yet, under the arbitrary povisions of the aforesaid statute under which this action is instituted, such knowledge is conclusively presumed from the failure to perform a prescribed duty of making an examination, without any reference to whether or not such knowledge could, in fact, have been obtained.

That the presumption of knowledge from the failure to investigate has no reasonable relationship or rational connection between the fact proved and the ultimate fact presumed and that such statute and such enactment seeks to and will if enforced deprive this defendant of his property without due process of law, and denies to this defendant within the jurisdiction of the State of Kansas, the equal protection of the law, in violation of the Fourteenth Amendment of the Constitution of the United States of America and in violation of Section 5 of the Bill of Rights of the State of Kansas.

10

Defendant further alleges and says that Section Two of Chapter 47 of the Laws of Kansas, 1879, being R. S. 9-164 (R. S. Statutes of Kansas, 1923 is unconstitutional and

void, in that it attempts to take the property of this defendant without due process of law, and denies to this defendant the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States and in violation of Section 1 of [fol. 48] the Bill of Rights of the State of Kansas; that the said section contains the following provision: "And the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and the assent to such deposit or creation of such debt on the part of such officer agent or manager so charged therewith"; that said section is unconstitutional and void in that it is unjust and unreasonable and is an arbitrary enactment of the State Legislature and makes the proof of insolvency of a bank a presumption of such knowledge and assent to a deposit or the creation a debt, whereas proof of such fact has no reasonable relationship to the question of assent to a deposit or the creation of a debt or does it have a tendency to prove it; that said presumption as created by statute is an arbitrary inference from the main fact proved and is wholly unreasonable, unnatural and extraordinary and deprives the defendant herein of a fair opportunity to submit his whole case to a jury or present a defense which he otherwise has; that the aforesaid deprives said defendant of a trial by jury in this case, on a material issue, on which under the common law, he is entitled to a trial by jury.

That the aforesaid section throws upon the defendant the burden of proving he did not assent to the deposits referred to in the plaintiff's petition, upon the introduction of evidence tending to prove that said banking institution was insolvent or in failing circumstances, at the time of the reception of the deposits set out in plaintiff's petition and without any evidence being offered against the defendant [fol. 49] to establish his assent to such deposits or any of them; that the aforesaid statute, by reason of the aforesaid seeks to, and will if enforced, deprive this defendant of his property without the due process of law, and denies to him the equal protection of the law, in violation of the Fourteenth Amendment of the Constitution of the United States

and in violation of Section 1 of the Bill of Rights of the State of Kansas. The defendant further states that section two of said act, being Revised Statutes 9-164, is unconstitutional and void when taken in connection with Section 1 of said act, (R. S. 9-163), in that the defendant is conclusively presumed to have knowledge if he failed to examine into the affairs of said institution sufficiently to ascertain its true condition. That thereby the defendant is denied the right of establishing as a defense to such cause of action his lack of knowledge of the insolvency and failing condition of said bank, if it existed, and his lack of assent to the reception of said deposits at the time mentioned in plaintiff's petition, contrary to the above named provisions of Constitution of the United States.

Wherefore, by reason of all of the above and foregoing facts, this defendant prays that this action against him be dismissed and that he have judgment for costs in this action.

Demurrer of Paintiff to Separate Answer of Each Defendant

Omitting the signatures and caption the plaintiff's separate demurrer to each of defendant's answers are as follows:

[fol. 50] DEMURRER TO THE SEPARATE ANSWER OF DEFENDANT C. L. HARRIS, EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED

Comes now the above named plaintiff and demurs:

First. To the fifth paragraph of the separate answer of the defendant, C. L. Harris, Executor of the last will and testament of T. A. Kramer, deceased, for the reason and upon the ground that said fifth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Second. To the sixth paragraph of the separate answer of the defendant, C. L. Harris, Executor of the last will and testament of T. A. Kramer, deceased, for the reason and

upon the ground that said sixth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff herein.

Third. To the seventh paragraph of the separate answer of the defendant, C. L. Harris, Executor of the last will and testament of T. A. Kramer, deceased, for the reason and upon the ground that said seventh paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Fourth. To the eighth paragraph of the separate answer of the defendant, C. L. Harris, for the reason and upon the ground that said eighth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Fifth. To the ninth paragraph of the separate answer of the defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, for the reason and [fol. 51] upon the ground that said ninth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of plaintiff filed herein.

Sixth. To the tenth paragraph of the separate answer of the defendant, C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, for the reason and upon the ground that said tenth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of plaintiff filed herein.

Demurrer to the Separate Answer of Defendant E. F. Adams

Comes now the above named plaintiff and demurs:

First. To the fifth paragraph of the separate answer of defendant, E. F. Adams, for the reason and upon the ground that said fifth paragraph does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Second. To the sixth paragraph of the separate answer of defendant, E. F. Adams, for the reason and upon the ground that said sixth paragraph of said answer does not contain facts sufficient to constitute a defense to the amended petition of plaintiff filed herein.

Third. To the seventh paragraph of the separate answer of defendant, E. F. Adams, for the reason and upon the ground that said seventh paragraph of said answer does not contain facts sufficient to constitute a defense to the amended petition of plaintiff filed herein.

Fourth. To the eighth paragraph of the separate answer of defendant, E. F. Adams, for the reason and upon the ground that said eighth paragraph of said answer does not contain facts sufficient to constitute a defense to the amended petition of plaintiff filed herein.

[fol. 52] DEMURRER TO THE SEPARATE ANSWER OF DEFENDANT C. L. KING

Comes now the above named plaintiff and demurs:

First. To the fifth paragraph of the separate answer of the defendant, C. L. King, for the reason and upon the ground that said fifth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Second. To the sixth paragraph of the separate answer of the defendant, C. L. King, for the reason and upon the ground that said sixth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Third. To the seventh paragraph of the separate answer of the defendant, C. L. King, for the reason and upon the ground that said seventh paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Fourth. To the eighth paragraph of the separate answer of the defendant, C. L. King, for the reason and upon the ground that said eighth paragraph of said separate answer

does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Fifth. To the ninth paragraph of the separate answer of the defendant, C. L. King, for the same reason and upon the same ground.

[fol. 53] DEMURRER TO THE SEPARATE ANSWER OF DEFENDANT A. B. EWING

Comes now the above named plaintiff and demurs:

First. To the fifth paragraph of the separate answer of the defendant, A. B. Ewing, for the reason and upon the ground that said fifth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Second. To the sixth paragraph of the separate answer of the defendant A. B. Ewing, for the reason and upon the ground that said sixth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Third. To the seventh paragraph of the separate answer of the defendant, A. B. Ewing, for the reason and upon the ground that said seventh paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Fourth. To the eighth paragraph of the separate answer of the defendant, A. B. Ewing, for the reason and upon the ground that said eighth paragraph of said seperate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Fifth. To the ninth paragraph of the separate answer of the defendant, A. B. Ewing, for the reason as above stated and upon the same ground.

DEMURRER TO THE SEPARATE ANSWER OF DEFENDANT H. F. FERRY

Comes now the above named plaintiff and demurs:

First. To the fifth paragraph of the separate answer of [fol. 54] the defendant, H. F. Ferry, for the reason and

upon the ground that said fifth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Second. To the sixth paragraph of the separate answer of the defendant, H. F. Ferry, for the reason and upon the ground that said sixth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Third. To he seventh paragraph of the separate answer of the defendant, H. F. Ferry, for the reason and upon the ground that said seventh paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Fourth. To the eighth paragraph of the separate answer of the defendant, H. F. Ferry, for the reason and upon the ground that said eighth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Fifth. To the ninth paragraph of the separate answer of the defendant, H. F. Ferry, for the reason and upon the same ground as above stated.

Demurrer to the Separate Answer of the Defendant L. D. Hadley

Comes now the above named plaintiff and demurs:

First. To the third paragraph of the separate answer of the defendant, L. D. Hadley, for the reason and upon the ground that said third paragraph of said separate answer does not contain facts sufficient to constitute a defense to [fol. 55] the amended petition of the plaintiff filed herein.

Second. To the fourth paragraph of the separate answer of the defendant, L. D. Hadley, for the reason and upon the ground that said fourth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Third. To the fifth paragraph of the separate answer of the defendant, L. D. Hadley, for the reason and upon the ground that said fifth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Fourth. To the sixth paragraph of the separate answer of the defendant, L. D. Hadley, for the reason and upon the ground that said sixth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Fifth. To the seventh paragraph of the separate answer of the defendant, L. D. Hadley, for the reason and upon the ground that said seventh paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Sixth. To the eighth paragraph of the separate answer of defendant, L. D. Hadley, for the reason and upon the ground that said eighth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Seventh. To the ninth paragraph of the separate answer of the defendant, L. D. Hadley, for the reason and upon [fol. 56] the ground that said ninth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

Eighth. To the tenth paragraph of the separate answer of the defendant, L. D. Hadley, for the reason and upon the ground that said tenth paragraph of said separate answer does not contain facts sufficient to constitute a defense to the amended petition of the plaintiff filed herein.

RULING OF THE COURT ON THE PLAINTIFF'S SEPARATE DEMURRERS TO THE SEPARATE ANSWERS OF DEFENDANTS

Journal Entry

Now, to-wit, on this 8th day of October, 1924, the same being one of the days of the regular 1924 Term of District

Court of Butler County, Kansas, this cause comes on for the rendition of judgment on the separate demurrers of the plaintiff to the separate answers of each and every defendant, the same having been heretofore argued and submitted to the court, and the court having had the same under advisement since such submission.

The plaintiff appeared by John J. Jones, and Leydig, Geddes and Grant, his attorneys.

The defendants, A. B. Ewing, C. L. King and H. F. Ferry appeared by A. C. Malloy and J. B. McKay, their attorneys; the defendant E. F. Adams appeared by J. B. McKay, her attorney; the defendant G. W. Lyon appeared by Hamilton & Woodward, his attorneys; the defendant L. D. Hadley, appeared by J. D. Houston and Leland & Bond, his attorneys; and the defendant C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, ap-
[fol. 57] peared in person and by C. L. Harris and S. M. Brewster, his attorneys.

The court after being fully advised in the premises, finds that the separate demurrer of the plaintiff to the separate answer of the defendant C. L. Harris, executor of the last will and testament of T. A. Kramer deceased should be overruled as to the 1st, 2nd, 3rd and 4th grounds of such demurrer, such grounds being directed to the 5th, 6th, 7th and 8th paragraphs respectively of said separate answer.

The court further finds that such separate demurrer should be sustained as to the 5th and 6th grounds thereof, such grounds being directed to the 9th and 10th paragraphs of such separate answer respectively.

The court further finds that the separate demurrer of the plaintiff to the separate answer of defendant L. D. Hadley, should be overruled as to the 1st, 2nd, 3rd, 4th, 5th and 6th grounds of such demurrer; such grounds being directed to the 3rd, 4th, 5th, 6th, 7th and 8th paragraphs of said separate answer, and should be sustained as to the 7th and 8th grounds of such demurrer, such grounds being directed to the 9th and 10 paragraphs of said separate answer.

The court further finds that the separate demurrer of plaintiff to the separate answer of defendant G. W. Lyon should be overruled as to the 1st, 2nd, and 3rd, grounds thereof; such grounds being directed to the 5th, 6th and

7th paragraphs respectively of such answer and should be sustained as to the 4th and 5th grounds thereof; such grounds being directed to the 8th and 9th paragraphs of said separate answer.

The court further finds that the plaintiff's separate demurrer to the separate answer of the defendant A. B. Ewing [fol. 58] should be overruled as to the 1st, 2nd and 3rd grounds thereof; such grounds being directed to the 5th, 6th and 7th paragraphs of such separate answer, and should be sustained as to the 4th and 5th grounds of such demurrer; such grounds being directed to the 8th and 9th paragraphs respectively of such separate answer.

The court further finds that the plaintiff's demurrer to the separate answer of defendant C. L. King should be overruled as to the 1st, 2nd and 3rd grounds thereof, such grounds being directed to the 5th, 6th and 7th paragraphs of said separate answer, and should be sustained as to the 4th and 5th grounds of such demurrer; such grounds being directed to the 8th and 9th paragraphs respectively of such separate answer.

The court further finds that the plaintiff's separate demurrer to the separate answer of H. F. Ferry should be overruled as to the 1st, 2nd and 3rd grounds thereof; such grounds being directed to the 5th, 6th and 7th paragraphs respectively of said separate answer, and should be sustained as to the 4th and 5th grounds thereof; such grounds being directed to the 8th and 9th paragraphs respectively of said separate answer.

The court further finds that the plaintiff's separate demurrer to the separate answer of defendant E. F. Adams, should be overruled as to the 1st and 2nd grounds thereof; such grounds being directed to the 5th and 6th paragraphs respectively of said separate answer, and should be sustained as to the 3rd and 4th grounds thereof; such grounds being directed to the 7th and 8th paragraphs respectively of said separate answer.

It is therefore by the court ordered and adjudged that the plaintiff's separate demurrer to the separate answer [fol. 59] of C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, be and the same is hereby overruled as to the 1st, 2nd, 3rd and 4th grounds thereof; such grounds being directed to the 5th, 6th, 7th and 8th

paragraphs respectively of such separate answer, and that such demurrer be sustained as to the 5th and 6th grounds thereof, such grounds being directed to the 9th and 10th paragraphs respectively of such separate answer.

It is further ordered and adjudged by the court that plaintiff's separate demurrer to the separate answer of defendant L. D. Hadley should be overruled as to the 1st, 2nd, 3rd, 4th, 5th and 6th grounds of such demurrer; such grounds being directed to the 3rd, 4th, 5th, 6th, 7th and 8th paragraphs of such separate answer; and that such demurrer should be sustained as to the 7th and 8th grounds of such demurrer; such grounds being directed to the 9th and 10th paragraphs of said separate answer.

It is further ordered and adjudged by the court that the plaintiff's separate demurrer to the separate answer of the defendant G. W. Lyon should be overruled as to the 1st, 2nd, and 3rd grounds thereof, such grounds being directed to the 5th, 6th and 7th paragraphs respectively of said separate answer and should be sustained as to the 4th and 5th grounds of such demurrer; such grounds being directed to the 8th and 9th paragraphs respectively of said separate answer.

It is further ordered and adjudged by the court that the plaintiff's separate demurrer to the separate answer of defendant A. B. Ewing be and the same is hereby overruled as to the 1st, 2nd and 3rd grounds thereof; such grounds being directed to the 5th, 6th and 7th paragraphs of such separate answer, and should be sustained as to the 4th and [fol. 60] 5th grounds thereof; such grounds being directed to the 8th and 9th paragraphs respectively of such answer.

It is further ordered and adjudged by the court that the plaintiff's separate demurrer to the separate answer of defendant C. L. King be and the same is hereby overruled as to the 1st, 2nd and 3rd grounds thereof, such grounds being directed to the 5th, 6th and 7th paragraphs respectively of said separate answer, and should be sustained as to the 4th and 5th grounds thereof, such grounds being directed to the 8th and 9th paragraphs respectively of said separate answer.

It is further ordered and adjudged by the court that the plaintiff's separate demurrer to the separate answer of the defendant E. F. Adams be and the same is hereby overruled

as to the 1st and 2nd grounds thereof; such grounds being directed to the 5th and 6th paragraphs respectively of said separate answer and should be sustained as to the 3rd and 4th grounds thereof, such grounds being directed to the 7th and 8th paragraphs respectively of said separate answer.

To which ruling and judgment of the court in so overruling such demurrers in part the plaintiff duly excepts and excepted and to which ruling and judgment of the court in so sustaining said demurrers in part the defendants and each of them duly except and excepted.

Reply of Plaintiff to Answer of Each Defendant

The separate verified reply of the plaintiff to the separate answer of each defendant, omitting the caption and signatures and verification is as follows:

[fol. 61] REPLY TO THE SEPARATE ANSWER OF THE DEFENDANT C. L. HARRIS, EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED

Comes now the plaintiff and for his reply to the separate answer of the defendant, C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, says:

1. Plaintiff admits that he received the dividend as alleged in the 7th paragraph of defendant's answer.

2. That he denies each and every, all and singular, the allegations of new matter contained in said separate answer of the defendant, C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, except those hereinbefore expressly admitted.

3. Plaintiff denies that said The Butler County State Bank of El Dorado, Kansas, was run, managed and operated under the control and supervision of the Bank Commissioner of the State of Kansas; and denies that said bank commissioner knew the condition of said bank as alleged in the 8th paragraph of said answer, and denies that said bank was run and operated with full knowledge and approval of said bank commissioner.

Wherefore, plaintiff asks judgment against the said defendant as prayed for in his amended petition.

Reply to the Separate Answer of the Defendant C. L. King

Now comes the plaintiff and for his reply to the separate answer of the defendant, C. L. King, says:

1. Plaintiff admits receiving the dividend as alleged in said answer.

[fol. 62] 2. That he denies each and every, all and singular, the allegations of new matter contained in said separate answer of the defendant, C. L. King, except those hereinbefore specifically admitted.

3. Plaintiff denies that said The Butler County State Bank of El Dorado, Kansas, was run, managed and operated under the control and supervision of the Bank Commissioner of the State of Kansas; and denies that said bank commissioner knew the condition of said bank as alleged in the 7th paragraph of said answer, and denies that said bank was run and operated with full knowledge and approval of said bank commissioner.

Wherefore, plaintiff asks judgment against the said defendant as prayed for in his amended petition.

Reply to the Separate Answer of the Defendant E. F. Adams

Now comes the plaintiff and for his reply to the separate answer of the defendant, E. F. Adams, says:

1. Plaintiff admits that he received the dividend referred to in said separate answer.

2. That he denies each and every, all and singular, the allegations of new matter contained in said separate answer of the defendant, E. F. Adams, except those hereinbefore specifically admitted.

Wherefore, plaintiff asks judgment against the said defendant, as prayed for in his amended petition.

REPLY TO THE SEPARATE ANSWER OF THE DEFENDANT L. H. HADLEY

Comes now the plaintiff and for his reply to the separate answer of the defendant, L. D. Hadley, says:

1. That plaintiff admits that the said defendant was the [fol. 63] assistant cashier of the Butler County State Bank of El Dorado, Kansas, from July 2, 1917, to March 30, 1923; that he was a director of said The Butler County State Bank of El Dorado, Kansas, from January 4, 1921, to March 30, 1923.

2. Plaintiff admits that he received the dividend referred to in the answer of defendant.

3. That he denies each and every, all and singular, the allegations of new matter contained in said separate answer of the defendant, L. D. Hadley, except those hereinbefore expressly admitted.

4. Plaintiff denies that the said defendant, L. D. Hadley, was at any time the agent or representative of the Bank Commissioner of the State of Kansas, and denies that the said defendant at any time did any of the acts or transacted any of the business complained of in this plaintiff's amended petition by virtue of any power, authority, or direction of the Bank Commissioner of the State of Kansas, and denies that the said The Butler County State Bank was at any of the time or times mentioned in this plaintiff's amended petition, or the said defendant's separate answer, run, managed or operated under the control or supervision of the Bank Commissioner of the State of Kansas.

Wherefore, plaintiff asks judgment against the said defendant as prayed for in his amended petition.

REPLY TO THE SEPARATE ANSWER OF THE DEFENDANT A. B. EWING

Now comes the plaintiff and for his reply to the separate answer of the defendant, A. B. Ewing, says:

1. Plaintiff admits receiving the dividend as alleged in said answer.

2. That he denies each and every, all and singular the allegations of new matter contained in said separate answer [fol. 64] of the defendant, A. B. Ewing, except those hereinbefore specifically admitted.

3. Plaintiff denies that said The Butler County State Bank of El Dorado, Kansas, was run, managed and operated under the control and supervision of the Bank Commissioner of the State of Kansas; and denies that said bank commissioner knew the condition of said bank as alleged in the 7th paragraph of said answer, and denies that said bank was run and operated with full knowledge and approval of said bank commissioner.

Wherefore, plaintiff asks judgment against the said defendant as prayed for in his amended petition.

REPLY TO THE SEPARATE ANSWER OF THE DEFENDANT H. F. FERRY

Now comes the plaintiff and for his reply to the separate answer of the defendant, H. F. Ferry, says:

1. Plaintiff admits receiving the dividend as alleged in said answer.

2. That he denies each and every, all and singular, the allegations of new matter contained in said separate answer of the defendant, H. F. Ferry, except those hereinbefore specifically admitted.

3. Plaintiff denies that said The Butler County State Bank of El Dorado, Kansas, was run, managed and operated under the control and supervision of the Bank Commissioner of the State of Kansas; and denies that said bank commissioner knew the condition of said bank as alleged in the 7th paragraph of said answer, and denies that said bank was run and operated with full knowledge and approval of said bank commissioner.

Wherefore, plaintiff asks judgment against the said defendants as prayed for in his amended petition.

[fol. 65] Amended Petition in the Case of Ramsey Petroleum Company vs. E. F. Adams et al.

Omitting the signatures and caption the amended petition in the case of Ramsey Petroleum Company versus E. F. Adams, et al., is in words and figures as follows:

AMENDED PETITION

Now comes the plaintiff and for its cause of action against the defendants, alleges the following facts:

1. That the plaintiff is a corporation, duly organized under and by virtue of the Laws of the State of Kansas, and doing business in the State of Kansas with its principal place of business and correct post office address at El Dorado, Butler County, Kansas.

2. Plaintiff says that The Bulter County State Bank, at all the times hereinafter named, was a corporation duly and legally organized, existing and doing business under the Laws of the State of Kansas, and a banking institution engaged in the general banking business at El Dorado, Butler County, Kansas.

3. Plaintiff says that the defendants and each of them were stockholders of said bank and the said C. L. King, defendant, was an officer, director and president of said bank on the 30th day of March, A. D. 1923, and for more than three months prior thereto; that the defendant, H. F. Ferry, was an officer, director, vice president and cashier of said bank on the 30th day of March, A. D. 1923, and for more than three months prior thereto; that defendant, L. D. Hadley, was an officer, director and assistant cashier of said bank on the 30th day of March, 1923, and for more than three months prior thereto; that the defendants, A. B. Ewing, G. W. Lyon and T. A. Kramer, were directors of [fol. 66] said bank on the 30th day of March, A. D. 1923, and for more than three months prior thereto; that on the 30th day of March, 1923, and for more than two years prior thereto, the defendant, E. F. Adams, held herself out to be and represented herself to be vice president and director of said bank to the depositors and customers of said bank, and knowingly permitted and allowed herself to be so held out and so represented to be such director and

vice president of said bank by the said bank directors and officers during all of said time by having and permitting her name to be carried upon the stationery used by said bank directors and officers as a vice president of said bank and by having and knowingly permitting her name to be listed by the directors and officers of said bank upon the books and records of said bank as vice president and director of said bank, and by advertising and permitting advertisements to be carried in divers and different bank directories and bank registers, the names of all of which directories and bank registers, the plaintiff is unable to state, but among which are Rand and McNally's Bank Directory and Bank Register for the years 1921, 1922 and 1923 and American Bank Reporter for the years 1921 and 1922, in which registers said defendant, E. F. Adams, was advertised and held out to be a director and vice president of said The Butler County State Bank and that said defendants and each of them as such officers and directors actively participated in the management of the affairs of said bank.

4. Plaintiff alleges that on the 13th day of March, 1923, it had a general checking account in said The Butler County State Bank, and had on deposit therein the sum of $7,397.57 and that thereafter and on the 13th day of March, 1923, it [fol. 67] deposited in said bank in said account the sum of $5,071.88; that on the 13th day of March, 1923, it checked out of said account in said bank the sum of $679.58; that on the 14th day of March, 1923, it checked out of said account in said bank the sum of $211.62; that on the 15th day of March, 1923, it deposited in said bank in said account the sum of $2,917.27; that on the 15th day of March, 1923 it checked out of said account in said bank the sum of $2,624.65; that on the 16th day of March, 1923, it deposited in said bank in said account the sum of $12.53; that on the 17th day of March, 1923, it checked out of said account in said bank the sum of $227.89; that on the 19th day of March, 1923, it deposited in said bank in said account the sum of $180.00; that on the 19th day of March, 1923, it checked out of said account in said bank the sum of $12.01; that on the 20th day of March, 1923, it checked out of said account in said bank the sum of $1.14; that on the 21st day of March, 1923, it checked out of said account in said bank the sum of sixty cents; that on the 23rd day of March, 1923, it de-

posited in said bank in said account the sum of $2,835.39; that on the 23rd day of March, 1923, it checked out of said account in said bank the sum of $3,293.72; that on the 24th day of March, 1923, it checked out of said account in said bank the sum of $252.09; that on the 26th day of March, 1923, it deposited in said bank in said account the sum of $6,866.37; that on the 26th day of March, 1923, it checked out of said account in said bank the sum of $206.11; that on the 27th day of March, 1923, it deposited in said bank in said account the sum of $13,965.55; that on the 27th day of March, 1923, it checked out of said account in said bank the sum of $65.14; that on the 28th day *day* of March, 1923, [fol. 68] it checked out of said account in said bank, the sum of $89.03; and that said banking institution received said deposits and upon the receipt of such deposits, credited the same to the account of this plaintiff in and upon the records of said banking institution and thereby became and was indebted to the plaintiff to the amount of said deposits so made.

5. Plaintiff avers that at the time it deposited said sums in said bank, the said bank was insolvent and in failing circumstances. That said bank was insolvent and in failing circumstances for more than six months prior to March 30th, 1923, and that said defendants and each of them knew at the time said deposits were made and for more than six months prior to March 30th, 1923, had known that said bank was in said condition, or, by an examination into the affairs of said bank—which it was their duty to make—they could have ascertained such fact, and the plaintiff had no knowledge of the actual condition of said bank until the same was closed as hereinafter set forth.

6. Plaintiff avers that defendants and each of them notwithstanding their knowledge and means of knowledge, assented to the bank receiving the said deposits as hereinbefore stated.

7. Plaintiff alleges that since the commencement of this action, T. A. Kramer, defendant, herein, died at the City of East St. Louis, in the State of Illinois, and that C. L. Harris since the death of said T. A. Kramer was by the Probate Court of Butler County, Kansas, duly appointed the execu-

tor of the last will and testament and estate of said T. A. Kramer, deceased and that said C. L. Harris accepted the said appointment and duly and legally qualified as such by filing his bond, which was approved by the said court, and [fol. 69] his oath of office, and is now the duly and legally appointed, qualified and acting executor of the last will and testament and estate of the said T. A. Kramer, deceased.

8. Plaintiff avers that on the 30th day of March, A. D. 1923, said bank was closed by the State Bank Examiner of the State of Kansas and on that date suspended payment of its obligations and that on such date there remained of the said deposits so made, the sum of $31,582.98, and that there is now due this plaintiff thereon, $31,582.98 together with interest at the rate of six per cent per annum from the 30th day of March 1923, and that by reason of the premises hereinbefore set forth, there is now due this plaintiff from said defendants and each of them the said sum of $31,582.98 and interest as aforesaid.

Wherefore, plaintiff prays judgment against said defendants and each of them for the sum of $31,582.98 together with interest thereon at the rate of six per cent per annum from the 30th day of March, A. D. 1923, for costs and for general relief.

Statement of Evidence

ARGUMENT OF COUNSEL

Opening Statement on Behalf of Plaintiff, G. L. Ramsey, by Mr. Geddes

March 15, 1926—4:50 P. M.

Mr. Geddes: Gentlemen of the Jury:

Mr. Ramsey has been a resident of Butler County all his life. For several years prior to the 30th day of March, 1923, there was organized at El Dorado, Kansas, what was called the Butler County State Bank, of El Dorado. It was a state [fol. 70] bank, organized under the laws of the State of Kansas, by virtue of a charter issued to it by the proper authorities of the State of Kansas.

After the issuance of that charter, the bank opened here in El Dorado, and an ordinary general banking business was carried on from the time the bank opened until about the 29th day of March, 1923. The bank was located just a half a block north of the intersection of Main and Central streets, on the east side of the street.

The evidence will disclose that the defendant, C. L. King, on the 30th day of March, 1923, and for possibly two or three years before that, had been president of the Butler County State Bank, and was also a director of that bank during all of that time.

That the defendant, Ferry, on the 30th day of March, 1923, and for a long time prior thereto, had been vice-president of the Butler County State Bank and cashier of the bank, and also a director of the bank.

That on the 30th day of March, 1923, and for a year or so prior thereto, the defendant, L. D. Hadley, was assistant cashier of the Butler County State Bank, and was also a director of the bank.

The evidence will show that the defendants, A. B. Ewing, G. W. Lyon and T. A. Kramer, were members of the board of directors. The evidence will disclose that after this law suit was filed, Mr. Kramer died. Senator C. L. Harris, who was appointed executor of the last will and testament of Mr. Kramer, was substituted, or made defendant, in the case—he being merely in this case in his official capacity, representing the T. A. Kramer estate.

[fol. 71] The evidence will disclose, I think, that the defendant, Mrs. E. F. Adams, who was the wife of J. B. Adams, was held out as a vice-president of this bank for a period of two or three years prior to the 30th day of March, 1923; that she was held out as a director of the bank, a member of the board of directors; that she allowed and permitted herself to be held out as a vice-president of this bank and member of the board of directors, during the years 1921, 1922 and 1923, in various manners, among which were advertisements inserted in bank directories and bank registers, which carry the names of all banks in each state in the Union, and which give the names of the officers and directors of this bank, among which are the Rand & McNally Bank Directory and Bankers Register for the years 1921, 1922, and, I think, 1923; also the American Bank Re-

porter for the years 1921 and 1922; which will show she was held out, in such advertisements, as a director and, I think, as vice-president of this bank. And other directories will be produced and other evidence at the proper time, disclosing that she was carried in bank registers and reporters during all these years as a director and officer and vice-president of the Butler County State Bank.

I think the evidence will disclose that even the stationery of the bank carried her name on it as a vice-president of the bank and member of the board of directors.

Now, the evidence in this case will disclose that this institution, the Butler County State Bank, transacted the usual, ordinary, customary banking business, done by any bank. It had its place of business, its equipment, it received deposits from day to day, it loaned money—it did everything that an ordinary banking institution does. It issued checks and drafts.

[fol. 72] With particular reference to the defendants, King, Ferry, Ewing, Hadley and Lyon; I think the evidence will disclose that especially the defendant King was in charge and control of the bank, its management and operation, largely, during the two year period immediately preceding the 30th day of March, 1923, as its president.

That during all of that period of time, or most of it, the defendant Ferry was cashier of the bank, and a vice-president of the bank; that he was actively participating in the operations and conduct of the bank. Both of these two defendants were there day after day during all the time that the bank was open.

That the defendant Hadley, as assistant cashier, was there at the bank from day to day, all of these gentlemen receiving deposits from time to time, issuing drafts, loaning money, performing all the usual and ordinary business of men actively in charge of a bank.

The evidence will disclose that while Mr. King was president of the bank and personally there from day to day, generally supervising the affairs of the bank; yet his activities and conduct were under the direction and control of the board of directors, composed of the defendants in this case.

The evidence will disclose that, from time to time, from the year 1919, the board of directors of this bank made re-

ports to the state bank commissioner, which reports purported to show the actual condition of the bank, as reflected by its books, its notes, its records, and the knowledge its officers had as regards the condition of the bank. These reports showed the amount of the loans, the amount of discounts, the amount of the deposits, the amount of the over- [fol 73] drafts, if any; and, in detail, the exact financial condition of the bank, as its books and records and securities and notes purported to reflect.

The evidence will disclose that from time to time, under the law, representatives of the state bank commissioner's office came into the Butler County State Bank, and examined into its affairs, looked over its notes and securities, and discussed with the bank's officers and with these defendants, the nature and character of the loans, whether this particular note was good, or whether it was bad, or whether it was doubtful; discussed the security, if any, that the bank held for that particular note they were discussing; discussed the character of the notes which were unsecured, and the ability of the maker to pay them, and the probability that he would do so. And then the examiner would make up there a report of his examination of the bank, based upon such examination, and upon his talks with the officers and directors of the bank; and then that report would be gone over with the directors and signed by them, and sworn to by one of them, perhaps the cashier or assistant cashier.

Now, the various reports made on this bank by these examiners will be presented here and offered in evidence for your examination. The various reports of the examiners who examined the Butler County State Bank and made their reports of its condition, and sent them in to the state bank commissioner, will be here.

Now, at the same time that an examiner examines a bank, and examined this bank; I think the evidence will disclose that it was examined about every three months, the examiner also makes up and sends in to the state bank commissioner what is designated, "Confidential Report" of the [fol. 74] condition of the bank; and I think, in the development of the evidence in case: that these confidential reports will be here, showing you the nature and condition of the bank, as found by the bank examiners who made the various examinations.

The evidence in this case will disclose that about 1921, and possibly prior to March, 1921, the Butler County State Bank was financially in dire straits. It was even then in a failing condition. I think the evidence will show that it was even then financially insolvent; that it had on its books and carried a tremendous amount of overdrafts; and the evidence will disclose, and the law as given you by the court, will disclose what an overdraft is. The amount of overdrafts gradually mounted from 1921 down to 1923, when the bank was closed.

The evidence in this case will disclose that during all that period between March, 1921, and March 1923, and for some time prior thereto, there was a tremendous amount of paper in the bank, the makers of which were unable to pay. The security behind lots of the paper, such as was secured, was wholly insufficient, had it then been reduced to money, to have discharged indebtedness.

The evidence will disclose that the Butler County State Bank held paper of the Meridith Contracting Company, in March, 1923, in an amount, I think, of over $200,000.00 of that borrower alone.

That there was a man by the name of A. G. Williams, who, I think, was a member of the C. W. Meredith Contracting Company, and a son-in-law of Mr. Meredith; and the bank had loaned him a tremendous amount of money, something like, I think, $98,000.00.

That the Red Ball Refining Company was another borrower, which had a tremendous amount of money borrowed, [fol. 75] and could not pay. That the El Dorado Refinery (Fidelity) was another corporation that had a tremendous amount of money borrowed there, and could not pay.

The evidence will disclose that a man by the name of Andrews had a tremendous amount of money borrowed at this bank. There was some security, I think, for this loan, on a few head of horses and cattle, and on some land out in a western county, on which there was already a first mortgage worth practically all that the land was worth.

That numerous other parties, the names of whom I cannot recall just now, had borrowed money from time to time of this bank, until the amount of the loans to them amounted, in the aggregate, on the 30th day of March, 1923, some where in the neighborhood of $400,000.00 to $500,-

000.00 of bad paper in this bank, at least, to the extent of over half of it.

The evidence in this case will disclose that every one of these defendants—King, president, there in charge every day; Ferry cashier; Hadley, assistant cashier; Ewing, in the capacity at one time of either cashier or assistant cashier and always a director of the bank for a period of three or four years prior to March 30, 1923; that these defendants knew all about this paper, knew, or should have known, the nature and character, or essential value of the security behind these particular items of indebtedness I have referred to, and many others, starting away back, probably in 1921 or 1922, and which just gradually mounted and mounted, down to the day when the bank closed its doors.

The evidence will disclose that during the two-year period prior to March 30, 1923, there was a tremendous amount of what is known as excess loans; that these loans grew [fol. 76] from time to time, until this bank was placed in a position where it was hopelessly insolvent, and of course, it had to close its doors.

The evidence in this case will disclose that these examiners who examined this bank from time to time—along in 1921, back, I think, in the early part of 1921, an examiner who now lives over at Sedan, made an examination of that bank; and from that time on, every examiner who made an examination of this bank, specifically directed the attention of these defendants to these particular tremendous loans that I have been speaking about, directed their attention to the fact that there was a tremendous amount of excess loans, that they must not be longer carried, that they must be collected or charged off; and then the next examiner would find that the same condition prevailed, except that in many instances these excess loans had been increased, instead of being collected or charged off, and on the greater portion of them the interest was not paid; that the greater portion of these excess loans were a year or 18 months, and some more than that, past due, and no collections had been made.

The evidence will disclose that when one of these examiners made an examination of this bank, he talked with these directors, the defendants in this case, about the condition

of the bank, about their overdrafts, about the excess loans, about the nature of the security, about their failures to meet the requirements of the examiner who had been there before. He told them that he would require an assessment of 100 per cent on the stockholders, that that would be one of the requirements that he would send in to the state bank commissioner, as a result of his examination, in order that [fol. 77] the bank might be brought out of the hopeless condition it was then in, and put in a position where it might possibly be able to go on.

The evidence in this case will disclose that from day to day, during all of this time, depositors were coming in and putting money into that bank; that the officers and directors of that bank were holding themselves out to the public as a going concern, that they were taking the money that was being offered to them by the customers of the bank and giving them credit for it; and that these defendants, every one of them, knew, actually knew, what the condition of the bank was.

The evidence in this case will disclose that in the early part of the year 1923, the governor of this state, who has the authority to appoint the state bank commissioner, appointed Mr. Clark Peterson bank commissioner; that he qualified and took up the duties of bank commissioner, succeeding Mr. Foster; that in February, 1923, Mr. Peterson sent a man by the name of Harry Warren to El Dorado, to examine the Butler County State Bank; that Mr. Warren came here and was here for some two or three days; that he thoroughly examined the bank; that he sat down around the table and went over the condition of the bank with King, Ferry, Hadley, and the other directors; that they talked about the excess loans, talked about the failure of the collections; of the failure to levy the 100 per cent assessment; talked about the overdrafts; about the failure of the bank officers and directors to reduce this indebtedness or to collect anything on these big debts.

Mr. Warren made his report and submitted it to them. They signed it, and the evidence will disclose that one of [fol. 78] them swore to it. And that report was sent in to the bank commissioner, and these defendants knew all about it, they knew just what it showed, they knew just how much the indebtedness of the bank was, they knew all about the condition of the bank.

Now, scarcely had that examination been made and sent in to the bank commissioner—I think the evidence will disclose that just about that time, there were some gentlemen met down in some part of the Butler County State Bank building—I am inclined to think that Mr. Frazier was there; that perhaps Robert Hazlett was there; that perhaps Robert Bradford was there; and they held a conference together with reference to the condition of this bank and what should be done with reference to the saving of the bank.

I think the evidence will disclose that while that conference was on, that the defendant King was there, and if he did not actually participate in that conference, he heard the discussion. And I think the evidence will show that some more of these defendant directors were there and knew all about what that conference was for, and that the condition of the bank was the thing gone over there at that conference.

I think the evidence will disclose that there were as many as two, if not three, such conferences in the Butler County State Bank building, and within a period of sixty days, at least, prior to the 30th day of March, 1923, the day on which the bank was actually closed by the authorities of this state.

The evidence will disclose that Mr. Warren made an examination of this bank in the latter part of February, 1923, ending the examination, I think, approximately, on the 23d day of February, 1923; and at that time a full and complete report of the condition of this bank was made up by [fol. 79] Mr. Warren, and signed by the defendants and sent in to the bank commissioner. The condition of the bank was talked over, and at that time the bank was hopelessly insolvent.

I think the evidence will disclose that, perhaps, at that time, another banker in this town was in Topeka, keeping in touch with these gentlemen who were having these conferences, and endeavoring to negotiate for them with the bank commissioner, to work out some sort of an arrangement to keep this bank open; and that these defendants, every one of them, knew all about that transaction that was going on, and knew all about the condition of the bank.

The evidence in this case will disclose that the plaintiff in this case had been a depositor in the Butler County State Bank for a long period of time prior to the 30th day of March, 1923; that on the 8th day of March, 1923, about

fourteen days after Mr. Warren had been here and made an examination of the Butler County State Bank, about fourteen days after he had sat down and had a talk with these defendants about the indebtedness of the bank, and after he had discussed with them the general condition of the bank; that Mr. Ramsey went into the bank on the 8th or 9th of March, and deposited in that bank $2,168.85, in a checking account that he had been carrying at that time; that he went to the bank on the 9th day of March, 1923, and deposited $40.00 in that bank; that he went back on the 12th day of March 1923, and deposited $1,411.17; that on the next day, on the 13th day of March, he went to the bank and put in $1,600.00 more; that on the 26th day of March, Mr. Ramsey went to this bank and deposited there $3,615.60.

The evidence will disclose that intervening between the 8th day of March, 1923, and the 30th day of March, Mr. [fol. 80] Ramsey had issued certain checks, so that his checking account had been reduced to the extent that on the 30th day of March, 1923, he had remaining on deposit in that bank $22,726.16, in that checking account, of his money.

Now, the evidence will disclose that Mr. Ramsey at that time knew nothing about the financial condition of the bank; that he went in with his money, and they were there to take his money, and put it on deposit in that bank.

The evidence in this case will disclose that no one of these defendants made any mention to Mr. Ramsey about the financial condition of the bank, or that the bank was insolvent, or that the bank commissioner was about to close the bank. They simply took his money, as they took everybody else's, and put it in the coffers of the bank, and gave him a deposit slip for it.

And then, on the morning of the 30th day of March, 1923, under the direction of the bank commissioner of this state, acting under the law, they placed on the door of the bank a short notice, stating, in substance, that this bank was in the hands of the Bank Commissioner of the State of Kansas, signed, I believe, Carl J. Peterson, Bank Commissioner, by Harry Warren, Deputy; and the doors of the Butler County State Bank did not open that morning, and they have never been opened since, as a going banking concern.

Now, the evidence in this case will disclose that at the time of every deposit that I have mentioned, and that we have set out in this petition, that the plaintiff in this case made—every one of these defendants, the president, the cashier, the assistant cashier, and the directors, knew the condition of this bank, they had full knowledge of it; at the very time he was making these deposits and they were re- [fol. 81] ceiving his money and issuing him deposit slips for it, they had full knowledge of the insolvent condition of the Butler County State Bank.

At least, the evidence will disclose that if these defendants had exercised that degree of care and caution and prudence in the examination of the books and records of that banking institution, of its notes secured and unsecured and had given attention to the value of the securities that it held for such of its notes as were secured, that the law presumes they will exercise, they would have known that their bank was hopelessly insolvent, and had been for many months prior to the 30th day of March, 1923.

Now, then, this action is brought by the plaintiff to recover from these men the amount of those deposits, that is, the amount remaining in his checking account of those deposits, on the day that the bank closed its doors, that money not having been paid back to him by the bank where he left it.

The law of this state provides that under certain conditions and circumstances: where a depositor places his money in a state bank which is in an insolvent or failing condition—those particular circumstances and conditions will be enumerated to you by the court—under those circumstances and conditions, where a depositor puts his money in a bank, when it is in that condition, then he may call upon the officers and directors of that bank to refund to him the amount of the money that he has deposited in that bank. If he places it there under those conditions, then he is entitled to recover from the officers and directors who have full knowledge, or who charged with knowledge, assent to the reception of those deposits.

[fol. 82] This action is brought to recover Mr. Ramsey's twenty-two thousand and some odd dollars, with six per cent interest from March 30, 1923.

The evidence will further disclose in this case that after the Bank Commissioner of the State of Kansas closed the doors of the Butler County State Bank, he placed I think, Mr. Harry Warren, in charge of the bank temporarily, as assistant bank commissioner. They proceeded to make a further examination of the condition of the bank, of its notes, its assets, the amount of money actually on hand in the bank, the amount of money which the bank actually had on deposit in other banks, its overdrafts, its excess loans, its securities, that is, property of every kind and character; and then, after that examination had been completed; a man by the name of R. T. Creepy was appointed receiver for the bank; and the Honorable W. F. Benson of El Dorado, former state bank commissioner, was appointed assistant receiver, and placed in active charge of liquidating the assets of the bank and collecting what could be collected.

The exact date of Mr. Benson's appointment as assistant receiver of the Butler County State Bank, I can't give you. He qualified and took charge of the bank, and he continued in that capacity until some months ago, when the bank commissioner of this state who had superseded Mr. Peterson, determined to change receivers of the bank, and he appointed Mr. W. R. Childs as assistant receiver of the Bulter County State Bank; and thereupon Mr. Childs qualified as assistant receiver, and he has been endeavoring to collect up what obligations were owing to the bank.

I think that the evidence will disclose that from the 30th day of March, 1923, down to the present time, that the [fol. 83] efforts of Mr. C. and Mr. Benson, and the efforts of Senator Docking, who became receiver succeeding Mr. C. and Mr. Childs the present assistant receiver, that they are about $350,000.00 to $360,000.00 short of being able to collect up the obligations of this bank.

The evidence will disclose that at the time this bank failed, it was hopelessly insolvent and had been for months. and that it ought to have been closed long before.

I believe that the evidence will disclose that the defendant, T. A. Kramer, was a member of the board of directors of the Butler County State Bank for several years; that several months prior to the 30th day of March, 1923, and possibly even as much as a year before, he started on a trip to Europe; and that from that time on he never at-

tended any meeting of the board of directors of the Butler County State Bank; never made any examination of any kind of the affairs of that bank; made no effort whatever to find out anything about the condition of the bank, from the time he left on that trip, during all the time intervening, until the bank was closed.

I think the pleadings, and the evidence in this case, disclose that certain of the defendants specifically say that they did not attend meetings of the board of directors; that they were not even recognized as members of the board of directors; that they made no effort to find out what was the condition of the bank; that they even purport to say that, while the books and records of the bank show that they were stockholders and directors; that while the reports sent in to the banking department of this state bear their signatures as directors; while they were there in the bank every day it was open; now they say that they [fol. 84] made no effort to find out the condition of the bank and attempt to deny that they had stock or were directors in the bank.

Now, gentlemen of the jury, if we prove this state of facts, as I have outlined them to you, which we propose to do, then, under the law, I think it will be your sworn duty to return a verdict for Mr. Ramsey against these defendants, for the amount he is asking here, with six per cent interest from March 30, 1923.

Mr. McKay: Comes now the defendant, E. F. Adams, and moves the court for judgment in her favor on the pleadings and the opening statement of counsel for the plaintiff, for the reason that such pleadings and opening statement do not state any cause of action in favor of the plaintiff, and against the defendant, E. F. Adams.

Motion overruled.

Mr. Brewster: I make the same motion on behalf of the defendant, C. L. Harris, as executor.

Motion overruled.

Mr. Woodward: The same motion on behalf of the defendant, Geo. W. Lyon.

Motion overruled.

Mr. Bond: The same motion on behalf of the defendant L. D. Hadley.

Motion overruled.

Mr. Malloy: The same motion on behalf of the defendants, King, Ferry and Ewing.

Motion overruled.

[fol. 85] Opening Statement on Behalf of the Defendant C. L. Harris, as Executor

By Mr. Brewster: Gentlemen of the Jury:

As you have learned from the opening statement of Mr. Geddes, there is a large number of defendants in this case, and they are represented by different attorneys.

As representing the Kramer estate, and the defendant Harris, I want to state to you just what our defense will be. I think the best way to do that will be to read, at least a portion, of the answer which has been filed in this case by Mr. Harris.

Mr. Geddes: The plaintiff now objects to the reading to the jury of any of that part of the answer of the defendant Harris, as executor, with reference to the sickness of T. A. Kramer, for the reason that the same does not state any defense against the cause of action set forth in plaintiff's petition. It does not state any part of a defense against the cause of action set forth in plaintiff's petition, and is entirely incompetent, irrelevant and immaterial, and prejudicial to the rights of this plaintiff.

Objection overruled.

Mr. Brewster: Now, gentlemen of the jury, the facts, as I understand them, will be shown to be about as follows:

After the death of Mr. Adams, Mr. King and Mr. Ferry took the active part in the control of the Butler County State Bank. Immediately upon the death of Mr. Adams, Mr. King and Mr. Ferry consulted with the bank commissioner, and they were directed by such bank commissioner in the operation and control of the bank.

[fol. 86] This action is brought under the provisions of a statute passed in 1878, which provides that any bank director or officer who has knowledge of the insolvency of

such bank, and who assents to the reception of deposits in such bank, shall be individually liable to the depositor for the amount of his deposit.

At that time, there was no banking department in the State of Kansas. Afterwards, the bank commissioner's department was created, and the bank commissioner was given control of the bank, with full power to require the bank to do what he directs, and with full power of removal if the officers of the bank fail to carry out the orders and directions of the bank commissioner.

Mr. King and Mr. Ferry, and the other officers of the Butler County State Bank, were directed by the bank commissioner to operate this bank. Perhaps, they did have some excess paper. The books will show that the condition of the bank, as it was being conducted there, from time to time was reported with complete accuracy to the bank commissioner; that there were no false entries; no excess loans made after the death of Mr. Adams.

That whatever condition existed there during the period that Mr. Geddes has been talking about, existed prior to that period. These men went in there and took charge of the bank in the condition it then was in, and operated it under the direction of the bank commissioner.

The bank commissioner was kept fully informed of the exact condition of that bank; not only the bank commissioner at that time, Mr. Wilson, but also his successor, Mr. Foster, was kept fully informed of everything that was going on in that bank. After such information was given, [fol. 87] these bankers were directed by the bank commissioner to continue to operate the bank.

This bank was a guaranteed bank. Under the provisions of the guaranty law, these deposits were guaranteed by the state; and I think the evidence will disclose that this action is merely an action to protect that fund, these deposits were guaranteed by the guaranty fund, and the banking department, with full knowledge of the condition of the bank, was authorizing and directing it to be kept open, as it was all the other banks in the State of Kansas.

This information was given right along. Mr. Ferry and Mr. King and the other officers would make the reports to the state bank commissioner. At no time, during the years 1921, 1922, and at the time these deposits were received in 1923, did the officers and directors know that the bank was

in an insolvent condition. The bank commissioners, both Mr. Foster and Mr. Wilson, and perhaps Peterson, had the same information that the officers and directors of the bank had, and the bank commissioners did not believe that the bank was insolvent.

Mr. Geddes: The plaintiff objects to this last statement of counsel, and moves the court to strike it out and withdraw it from the consideration of the jury, for the reason that what the bank commissioner may or may not have believed would constitute no defense to this action.

Overuled.

Mr. Brewster: These deposits were received in the due course of business, and the bank was closed by order of the banking department sometime in March, 1923.

[fol. 88] Up to the day this bank was closed, while there may have been some question as to some of the paper, the evidence will disclose that these men had made considerable effort to collect this excess paper, that they were acting in good faith, that they believed that this bank could be made to go; but after they had operated it under the direction of the bank commissioner for this period of time, they said they could not go farther, and they insisted that the said bank commissioner close the bank.

I think the evidence will show that at the time of the final examination, the examiner refused to order the bank closed, and directed them to keep it open, and Mr. Ferry and Mr. King decided not to continue to operate the bank.

I think the evidence will show that Mr. Kramer knew nothing of the condition of the bank at the time these deposits were received. Sometime, I think as late as June, 1922, Mr. Kramer had made some report. I think at that time, there was no cause of alarm but that the bank was a going concern. I think the evidence will show that the bank was in such a condition at that time, that to have closed it then would have been a calamity.

At the time these deposits were received, in March, 1923, Mr. Kramer was, at that time, practically in a dying condition. The evidence will show that there was no way by which he could make an examination of the books of the bank. They were in El Dorado. He was confined in his room at East St. Louis. There was no way that the books

could be taken to him, and no way to get him to the books. And more than that, the physicians in charge would not have permitted him under any circumstances, to make any [fol. 89] examination of the books of the bank, or to have any information concerning the condition of the bank, or any business affairs. At that time, to have drawn his attention to business affairs would probably have hastened his death. In March, 1923, Mr. Kramer was in no physical condition or mental condition to assent to the reception of deposits.

The court will instruct you as to the law, that not only is it necessary that the bank be insolvent, and necessary that the directors in charge have knowledge of the insolvency of the bank, but also that the director must assent and give assent to the reception of the deposits.

Mr. Kramer did not know anything about these deposits. His mind, during January, February and March, 1923, and before that, was in no condition to deal with business affairs.

If we establish these facts, I think, under the instructions of the court, you must find as a fact that the defendant Kramer did not assent to the reception of the particular deposits in question in this case, that he had no knowledge of the making of the deposits, and was in no condition to make an examination of the books of the bank, or to consent or dissent to the reception of the deposits.

If we prove these things, gentlemen, I think we will be entitled to a verdict at your hands.

6:30 P. M.. The further hearing of this case is adjourned to 9:00 A. M. tomorrow morning—Tuesday, March 16, 1926.

[fol. 90] Opening Statement on Behalf of Defendant L. D. Hadley

By Mr. Bond: Gentlemen of the Jury: I think the evidence will show about the following state of facts with reference to the defense of Mr. Hadley:

He came to this county from Indiana when about 17 years of age, grew up in this county, and at one time was county clerk, then assistant county treasurer for, I believe

about three years. At that time, Mr. J. B. Adams came to Mr. Hadley and asked him to go to the Butler County State Bank. He felt that he would like the banking business, but he had had no experience. He went into the bank for Mr. Adams at a salary of $60.00 a month, for the purpose of learning the banking business. He worked there for some time, and his salary was gradually raised from $60.00 to $75.00 a month.

The oil boom came on, and Mr. Hadley's salary was advanced to $175.00 a month, the amount he was receiving when the bank was closed. At the time his salary was raised to $175.00 a month; Mr. Hadley became teller.

The evidence will show that in January, 1921, Mr. Adams, who was a very close personal friend of Mr. Hadley, came to Mrs. Hadley and said, L. D., we would like to have you act as a director of this bank. We are having difficulty here in finding enough resident directors to properly conduct the affairs of this bank. You will understand that I am president of this bank, that I own a large part of the stock, and I would like to have you act as a director, as a personal favor to me.

Mr. Hadley objected. He said, Mr. Adams, I don't feel that I am the man to take this position. I don't think I [fol. 91] ought to do it. I never have been a straw man. I am satisfied with my position here. I appreciate all that you have done for me, but I do not feel that I ought to do this.

The evidence will show that Mr. Adams urged Mr. Hadley, as a personal favor to become a director of the bank. He said, I will transfer to you the required number of shares of stock, in your own name. Any time I want these shares, I will ask you for them, and I will expect you to return them to me.

Over his protest, he was persuaded by Mr. Adams to allow himself to be elected as a director. Mr. Hadley had never had any experience as a director of a bank. He was not an attorney and did not consult with an attorney. He did not understand the responsibility of a director of a bank. Mr. Adams told him. It will not increase your responsibility, it will not increase your work. You will continue your work at $175.00 a month. We will not expect you to direct this bank. I will do the directing.

Now, Mr. Hadley, not being experienced, allowed himself to become a director of the Butler County State Bank in that way. He never owned, in good faith, the required number of shares in that bank in order to be a director.

Now, gentlemen, I want to read to you the answer which has been filed in this case by the defendant, L. D. Hadley, as a part of my opening statement.

(Reads answer.)

I think the evidence will show that there is a vast difference in a banking institution, as to solvency, whether that bank is a going concern, or whether it is in the hands of the bank commissioner. I think there will be testimony of men in position to know, to show that it is practically im- [fol. 92] possible for any one to say at any time, that a bank is solvent or insolvent, if that bank has sufficient reserve.

There was a good deal of paper in this bank which was considered slow paper. There were some large loans in this bank. But the evidence will show that Mr. Hadley had nothing whatever to do with the making on these loans. Every one of these loans was put in there prior to the time that the defendant Hadley came into the bank, in January, 1921. Most of these loans were made prior to that time, and the loans were made by Mr. Adams.

Mr. Adams made these loans in good faith, but Mr. Hadley had nothing to do with the making of these loans.

After Mr. Hadley became a director of this bank, if he ever did, he did all that he could, in his feeble way, to direct this bank. Mr. Adams made it very plain that he was not a director of the bank, that his opinion would not have much weight. He was never allowed to do those things.

The evidence will show that in March, 1921, Mr. Adams died. Mr. Hadley continued to work in that bank. I think, at that time, there was a conference with the banking department relative to the condition of that bank. Mr. Hadley had some knowledge of the condition of affairs there, but he did not have such knowledge, and no other director of that bank could have had any knowledge that the bank was insolvent. They knew there was some bad paper there, but that is not knowing that the bank was insolvent.

The evidence will show that Mr. Hadley knew that there had been a conference with the banking department, and that the banking department was of the opinion at that

[fol. 93] time that the bank was solvent in spite of these loans that had been made before that time. The banking department, in absolute good faith, thought that the bank was solvent, and could be operated, so that no one would suffer loss.

The evidence in this case will show that under this bank guaranty law, the plaintiff should recover every cent that is due him. The evidence will show that certificates were issued to Mr. Ramsey, the plaintiff in this action—

To which the plaintiff objects.

Withdrawn.

The evidence will show that immediately after Mr. Adams' death, the officers of this bank told the bank commissioner that they would like to have him take charge of the bank. The bank commissioner at that time was of the opinion that this bank was solvent, and that it should be operated, and he encouraged and requested and told these men to go ahead and manage the bank, that everybody would get their money, and there would be no loss.

We are making the allegation that the bank commissioner took charge of the bank. The evidence will not show that the bank commissioner came down from Topeka and went into the bank, but he put deputies in there, and had examinations, and the bank commissioner was in actual control and management of that bank.

The contention of this defendant is that the bank commissioner took charge of that bank in March, 1921, and remained in charge of it until the bank was closed. The bank commissioner felt that the bank was solvent, and wanted these officers and employees to continue in that bank.

[fol. 94] Mr. Geddes: The plaintiff moves the court to strike out all that part of the statement of counsel on behalf of the defendant Hadley, as regards what the bank commissioner did or did not do, with reference to directing the operation and management and control of the Butler County State Bank, and withdraw it from the consideration of the jury, as incompetent, irrelevant and immaterial, as not constituting any part of a defense on behalf of the defendant Hadley, and prejudicial to the rights of the plaintiff.

The Court: I think the court will probably receive the testimony to some extent, but the jury will be admonished

for what purpose it is received. The motion will now be overruled.

Mr Bond: The evidence will show that the banking department was in charge of this bank from the time of Bun Adams' death until the present time.

The evidence in this case will show that the officers of the Butler County State Bank asked the bank commissioner to close the bank the night before it was closed. And at that time the bank commissioner himself actually believed that the bank was solvent and that all of the paper could be paid, and that the bank could pull through. And only upon the insistence of the employees and directors and officers of the bank, did the bank commissioner finally agree to close the bank.

The evidence will show that there was a particular reason for the officers and directors asking the bank commissioner to close the bank at that time, that they did not then believe that the bank was insolvent.

We will have to admit that there was some bad paper there, a considerable amount of it. If you close a bank, or [fol. 95] any other institution, even if it were solvent at the time you close it, it might become insolvent.

Some evidence had developed that particular day that there was danger of a run on this bank. The officers knew that if a run started, they would not be able to continue to operate the bank, even though it were solvent. They asked that it be closed.

The evidence will show that this statute was passed many, many years ago, before our present banking system was——

Mr. Geddes: The plaintiff objects to this statement as being incompetent, irrelevant and immaterial, and no defense to this action.

Sustained.

Mr. Bond: When the defendant Hadley has shown these facts, gentlemen, I think he will be entitled to receive a verdict at your hands. I don't think there will be any evidence to show that Mr. Hadley assented to the receiving of deposits, knowing that the bank was in an insolvent condition.

The evidence will show that he could not have known that the bank was insolvent. He made the very best exam-

ination that he could, and from that examination, he concluded that the bank was solvent and was operating as a solvent bank; and if we show these facts, we will be entitled to a verdict at your hands in favor of the defendant Hadley.

Mr. Geddes: The plaintiff now moves the court to strike out and take from the consideration of the jury all that portion of counsel's statement with reference to conversations with J. B. Adams, as regards the circumstances and conditions under which the defendant Hadley became a director of this bank, for the reason that it is no defense to the [fol. 96] plaintiff's cause of action, and no part of a defense; and for the further reason that, the statement affirmatively shows that the defendant Hadley is estopped from denying that he was a director of this bank.

The Court: The motion will be sustained with reference to the conversations between this defendant and J. B. Adams; and that portion of the statement will be stricken out and the jury is instructed to disregard it.

The burden of the proof will devolve upon the plaintiff in this action to show that Mr. Hadley was a director in this bank

Opening Statement, on Behalf of the Defendant, Mrs. E. F. Adams

By Mr. McKay: Gentlemen of Jury: The defendant, E. F. Adams, was the wife of Mr. Bun Adams. It is not the estate of Mr. J. B. Adams which is being sued in this case. It is his wife. She is the actual and not the nominal defendant.

When the Butler County State Bank was organized, or some time soon thereafter, Mrs. Adams acquired a few shares of stock in this institution, and for a while she was a director and vice-president of the bank.

On the 16th day of November, 1920, some two and a half years before these deposits in question in this case, were made, Mrs. Adams sold her stock in this bank. The evidence will show that on that day the stock was transferred on the books of the bank, and that on that day she resigned as director and vice-president of that bank, and from that time on, she has had nothing on earth to do with the bank.

She was never a director, she was not even a stockholder, [fol. 97] of this bank from the 16th day of November until the present time.

(Allegations of the petitions with respect to Mrs. Adams read to the jury by Mr. McKay.)

Now, you will note from that allegation that they do not claim that she was a director. They claim that she held herself out and respresented herself to be a director of the Butler County State Bank, even though, as a matter of fact, she was not a director.

The evidence will show that that absolutely was not the case; that Mrs. Adams, from the time of her husband's death, has not been in the Butler County State Bank building. She has never been near it. She has never attended at any time any meeting of the stockholders or officers or directors of that bank, since she resigned as director. She has had less to do with that bank than any one of you sitting in this jury box. There will be no evidence in this case which will show that she did.

From time she ceased to be a stockholder, she ceased to be identified with that institution in any way, shape or manner. She continued, possibly, to be a depositor in that bank, but that is all. She had absolutely — to do with the management, and she was never even in the building.

I do not know whether her name was continued to be carried in some bank directory published in New York City, or not, I don't care. She was a director at one time, and by reason of that fact, she had no way to keep them from publishing her name. I am a director of a state bank myself. If I should resign, I do not suppose that these people that publish these bank directories would learn of that for two or three years.

[fol. 98] No one can say that, with her knowledge or consent, her name ever appeared at any time on any advertisement or instrument of any kind, as a director of the Butler County State Bank after November, 1920.

They will not be able to show, because it is not a fact, that she ever permitted or allowed herself to be held out to any one as a director of this bank. Possibly they did not destroy the letterheads immediately upon her resignation. They may have used up the stationery that had her name on it. But there will be no evidence that she ever

knew anything about this. She had nothing to do with it and knew nothing about it.

Further, the evidence will show that there were three regular meetings of the stockholders of this bank after she ceased to be a director. And at these annual meetings, the stockholders did elect a board of directors for this bank, and she was never re-elected. There was a full board every year, and she was never one of them.

I think there was always a board of directors duly and legally elected for this bank every year after Mrs. Adams resigned. There were directors, called a board of directors of this bank, with the full number of members they were supposed to have at all times, and Mrs. Adams was never one of them.

She knew nothing about this bank, she never examined it after she ceased to be a director in 1920. I say to you that no legal duty devolved upon her to examine into the affairs of an institution with which she had no connection.

The plaintiff will not be able to show that she was an officer or director of this bank at the time these deposits [fol. 99] were received. No intelligent body of men could hold her liable for these deposits three and a half years after she ceased to be even a stockholder.

Opening Statement on Behalf of Defendant Geo. W. Lyon

By Mr. Woodward: Gentlemen of the Jury: The defense of Mr. Lyon is identical with the defense of most of the other defendants. Mr. Lyon is a farmer. In this connection, he came here in 1876. He is now about 70 years old, and has lived here fifty years.

About fourteen years ago, Mr. Adams prevailed upon Mr. Lyon to become a director in this bank. It was about fourteen years ago that Mr. Lyon moved to town from his farm, and since that time has resided here in El Dorado. He was prevailed upon by Mr. Adams to take out about $1,000.00 worth of stock in the Butler County State Bank and act as a director.

The defense of Mr. Lyon will be the same as that of the other defendants on the question of the bank operating under the direction and control of the banking department of the State of Kansas. And it is also Mr. Lyon's claim that he performed all the duties required of him while acting as a director of this bank.

The attitude of the defendant Lyons is not so much that he is going to prove something. He comes in here denying the facts upon which the plaintiff claims a right of action. These facts must exist. Before he can recover, the plaintiff must prove all the facts which he alleges. Now, we take the position that he cannot prove the existence of these facts.

The defendant Lyons further denies that at the date when these alleged deposits were made, he was a director [fol. 100] of the Butler County State Bank. The plaintiff will be unable to show that on March 8th, the date of the first deposit here, the defendant, George W. Lyon was a director of this bank. It devolves upon the plaintiff to show that he was.

The records of the Butler County State Bank will show that on January 5th, 1923, Geo. W. Lyon was dropped as a director of this bank at the annual meeting held January 5, 1923. Mr. Lyon was not reelected at that meeting. Prior to that time, the stockholders had voted to change the number of directors from seven to five. No director was elected to take Mr. Lyon's place. On January 5th, 1923, the new directors were elected, and Mr. Lyon was not one of those directors.

If this state of facts is shown to exist, we will expect a verdict at your hands in favor of the defendant, Geo. W. Lyon.

Opening Statement on Behalf of Defendants C. L. King, H. F. Ferry and A. B. Ewing

By Mr. Malloy: Gentlemen of the Jury: For the purpose of a more intelligent statement of the affairs involved in this case, I think the jury should have their attention called to the existence of certain laws.

In 1879, the law was passed under which this suit was brought, making directors responsible individually for failure to do certain things, or for the doing of certain things, where they have knowledge. The law provided that it was the duty of bank directors to examine into the affairs of the bank, and to know, if possible, its condition. The law [fol. 101] provided that failure on the part of such directors to perform such duties would raise the presumption, in case the bank became insolvent, that they had knowledge of the insolvency.

Mr. Geddes: The plaintiff objects to the statement of counsel, at this time, of the law under which these actions are brought—for the reason that it is not a statement of defense on behalf of his clients in this case.

The Court: There are certain facts that are developed by certain stituations and made effective by the law. The objection is overruled.

(By Mr. Malloy:) This law also provides that the failure to perform this duty of examining the bank raises the presumption that the directors had knowledge of the insolvency and also that they assented to the deposits. The presumption, however, does not apply to those who have made the examination required by law.

Insolvency, under our statute, with reference to a bank, has been defined to mean:

1st. Where the bank fails to pay its claims in the ordinary course of business. That is not involved in this case.

2nd. Where it fails to make its reserves equal to that which is required by law. That is not involved in this case.

3rd. Where the actual cash market value of the assets is insufficient to meet the indebtedness. That is involved in this case.

In 1897, almost twenty years after the enactment of the other statutes, the legislature passed what is known as the bank department act, creating a banking department in this state, and vesting powers in the bank commissioner. The court, at the proper time, will advise you with reference [fol. 102] to the power, authority and discretion of the bank commissioner. Practically, the only limit to his power and authority would be fraud, incompetency or refusal to act. Assuming that none of these existed, he is invested with authority practically absolute in his conduct of state banking institutions.

In 1909, the legislature passed what is known as the bank guaranty act, creating a fund, through the payment of deposits, or bonds, to create a fund to liquidate the liabilities to depositors in any state bank which might fail and be unable to pay out their obligations.

The evidence on the part of these defendants will establish the fact that this bank was organized in 1909, and from the inception of the organization, or practically so J. B.

Adams owned 73% of the stock of this bank; which condition has existed at all times referred to in the pleadings in this case.

The evidence will show that at the time of Mr. Adams' death, in 1921, and during the period of the administration of Mr. Foster as bank commissioner, there were approximately 1,100 state banks under the supervision of the bank commissioner, under the bank act.

The evidence will show that at all times, from the organization of the bank to the death of Mr. Adams, the personal conduct of the affairs of the bank, with reference to the lending of money and the handling of the note case, was in the hands of Mr. Adams. For a period of time, he was cashier of the bank. Later, he became vice-president and chairman of the board of directors.

The evidence in this case will show that during the war, there was a very large inflation in the matter of credits. [fol. 103] The court will instruct you that a jury has a right to take into account current events. You will be entitled to apply your general knowledge there.

The evidence will show that at the time, large loans were being made in different institutions. In fact, we will show you by the testimony of one or more bank commissioners of the State of Kansas, that during a certain portion of time, when the deflation period was on, we had what is known in banks as frozen assets. You will recall that that is an expression that originated along about that time. Frozen assets having reference to the fact that they were something that could not be liquidated; as for example, a bank being obliged to take in a farm, and then being unable to sell the farm, the bank could not liquidate its assets, they were frozen assets.

Among the banks throughout the state, we will be able to show to you by the testimony, was a great deal of what is known as frozen assets. We will show you by the testimony of the bank commissioner in charge at that time that if he had not exercised his discretion in directing and suggesting to state banks under his control whether they should or should not remain open and continue as going institutions, or close; that if he had applied the rules that the statute laid down as to the definition of insolvency; he would practically have crushed the state banking system of Kansas. So that, during that time, he, in his discretion,

looked over the entire field to ascertain the effect of either closing or keeping open certain institutions, whether they were so interlocked with other institutions or business, that the closing of a bank would operate to do great and irreparable harm, or, perchance, much less harm than would be caused by closing it.

[fol. 104] I apprehend that the testimony from every bank commissioner who will be upon the witness stand, and there will probably be four of them, that that question will be answered in that manner by every one of them, or at least by every one that has had experience since the deflation commenced.

The defendant King has been president of the institution from its inception to the closing of its doors.

The defendant Ferry was with this institution from its inception, commencing as assistant cashier, and remained as such until about 1917, when he retired, but remained as director. The evidence will show that he engaged in other enterprises and remained outside of the bank until after the death of Mr. Adams; that in 1922, the then bank commissioner, Mr. Foster, asked Mr. Ferry to come to Topeka, and he did so, and that Mr. Foster then requested him to go back into the bank as an officer and lend what aid he could in liquidating the long delayed collections or frozen assets of the bank. In pursuance of that request of Mr. Foster, Mr. Ferry did re-enter the bank and did so remain in the capacity of vice-president and cashier until the closing of the bank.

The testimony will show that Mr. Ewing was cashier of the bank at all of the times that Mr. Ferry was out of the institution; but when Mr. Ferry assumed the duties of vice-president and cashier, Mr. Ewing retired as an officer of the bank, but remained as director.

The various reports that were made by the examiners of this bank will show a long list under the heading of excess loans; and the testimony will show that excess loans are loans made to an individual that are in excess of the statutory [fol. 105] limit. But the testimony will also show you that in banking circles excess loans are not regarded as what we term bad or uncollectible paper. If this bank had made one loan to one individual of the entire amount of its loans, and that individual were absolutely solvent and that paper,

w-s collectible, then it w- uld not be a bad loan, but simply a violation of the banking regulations.

At the time of the death of Mr. Adams, on March 11, 1921, under rather tragic circumstances, an examiner was here for the state banking department, whose name was Bradlee. I think an examination had been in progress. The evidence will show*ing* that during the night, while Mr. Adams was hovering between life and death, Mr. King sent for Mr. Bradlee, who was at the hotel. Mr. Bradlee came down to the bank, and Mr. King said, Bradlee, the doctors inform me that Mr. Adams cannot live through the night. This tragedy is no doubt going to create a run on the bank tomorrow. You have just looked over its affairs. What do you advise me to do. Mr. Bradley said: Keep the bank open, it is the only thing to do. There may not be any run. And, strange to relate, there was no run. In fact, quite to the surprise of those in charge, the tendency was to increase the deposits, rather than a run.

Counsel has stated here, in his opening statement for plaintiff, that this institution, in March, 1921, was in dire straits and substantially insolvent. I think this bank was on what is known as the special list with the department, meaning that it was to receive special examination from time to time, from the date of the death of Mr. Adams.

The evidence will show, from some of the bank commissioners, that a large number of failures of banks occurred [fol. 106] throughout the State of Kansas during the deflation period, and a very large amount of liability was created against what we know as the state guaranty fund. The evidence will show that these bank commissioners gave themselves very special concern in preserving that fund, known as the bank guaranty fund, and as far as possible to keep it from going into a hopeless situation, where the entire system would break down, as it will now be admitted that it has, and it will take 144 years, under the present limitations, for that fund to pay out its present accrued liabilities.

Therefore, it became and was the chief concern, and I am not prepared to say it was not even the duty of the bank commissioner, in the exercise of the discretion which this law gives to him, to save unto the uttermost, if possible, these institutions, because if such an institution could be

reorganized, if it could be sold with an assumption of the liability, or if these frozen assets could be worked out, or collected up to the point where the stockholders in the bank would make up the difference—anything of that kind would save the crash of the bank and prevent increase of liability against the state guaranty fund. And they will testify that they were very much concerned about this.

Therefore, leading up to this point where, after the death of Mr. Adams, Mr. King and Mr. Ferry, and, as has been mentioned, even an outsider, who had enough regard for his widowed sister to endeavor to take the burden off of her shoulders—there is nothing secret about this, nothing bad about this, that a brother should exercise his privilege of trying to save his sister from embarrassment and to save his brother-in-law's name.

[fol. 107] These officers of the bank, together with such a one exercising such commendable sentiments, discussed this matter repeatedly, constantly I might say, with the banking department with reference to the condition of the note case of this bank. And this plaintiff will be unable to show that the statements of this bank ever disclosed any condition that would indicate that it was in a weak or failing condition, let alone absolutely insolvent. The statement made no such disclosure. The only thing that would lead to any such impression was the note case.

Expert evidence here, of men who are familiar with bank business and credits, will show to you, in addition to the common knowledge which you possess, that it is not alone a question of whether you have 160 acres of land, or whether you own a large amount of tangible property out of which a note could be collected, that determines whether a bank will lend you money, or not.

This expert evidence will disclose to you that it has been recognized in the highest banking circles that the finest collateral in the land is character.

The testimony will be that the valuation of the assets of a bank in the note case is measured by two rules, one while the institution is a going concern, and the other when it has closed its doors.

The opinion as to the collectibility of paper is exercised by the examiner in making up his report. But if the officers of the bank believe, and the conviction is an honest one, that the paper is good and will be collected, not neces-

sarily this day or next week, or when the bank examiner says it must be collected, but if they really believe that the paper is collectible, they do not have to regard it as bad under any rules ever made.

[fol. 108] The testimony in this case will show to you that after a bank goes into the hands of a receiver—I apprehend that the testimony of every one of these men will show that the value of the note case will depend on whether a man is execution proof, or has his tangible property right out in the open.

I will say to you that the evidence in this case will show, and it will be undisputed, that the officers and directors of this bank presented the exact situation to the state bank commissioner; that the suggestion of the banking department to them was, Go home and keep your bank open and continue to show improvement, and as long as you improve, you will keep it open. Even as late as the administration of Mr. Peterson, Mr. King and his brother discussed the matter with him, and he said to them, Go back and keep your bank open.

What are you going to do when the bank commissioner gives you that direction?

The evidence will show that these men had regard to and followed faithfully every suggestion of the bank commissioner. The slightest inuendo of the commissioner, his slightest suggestion, was followed to the letter.

They were subjected to special examinations from time to time. They made examinations themselves, keeping the department fully informed all the time with reference to this paper.

Understand, these large lines of credit referred to by counsel were there at the time of Mr. Adams' death. If any one would show an increase from that time on to the time the bank closed its doors; then I say to you that the testimony will show to you that the additional line of credit was extended to enable the debtor to work the trouble out, [fol. 109] like trying to take over some paving contract and work that out, all with the knowledge and consent of the department.

Now, we come down to the time of the examinations made by Mr. Warren. The evidence in this case will show that these men, these directors and officers of the bank, in the

exercise of an honest judgment, cooperating with the banking department, at no time prior to the closing of these doors, believed that this bank was insolvent. They regarded the papers as doubtful. They thought they might be able to collect it. They tried to make a sale of the bank, to save the depositors, working in every way they could to save the institution, under the direction of the department, that was possessed of the absolute power of a Czar.

The department did not close this bank. There had just been a special examination, and King and Ferry called this representative down to the bank and told him to put the notices on the door. What determined them on that? Here is what the evidence will show:

I take it that the plaintiff will offer evidence tending to show that there were some parties at Wichita negotiating for this bank. The evidence in that respect will be this:

That two or three weeks prior to the time the bank actually closed, Mr. Childs, a — of the assistant receiver of the bank, who had borrowed some money of this bank for some operations, applied to Mr. King for a substantial loan. Mr. King called him off into a side room, and said, Mr. Childs, we always have taken care of you, but we can't do it now, we are not in shape.

That is not an unusual answer for a bank to make if its reserves may be impaired, but Mr. King elaborated on the [fol. 110] matter to Mr. Childs. He said, Mr. Childs, I am fast coming to the conclusion that we are going to suffer a heavy loss, and unless we can reorganize this bank, or sell it, I don't know what is going to happen.

With that information, several weeks—two, anyhow, before the doors of the bank were closed, the evidence will show that Mr. Childs, who was more or less familiar with the bank, having done some business with it for several years, did not deem the matter of sufficient concern to withdraw his deposits; and had he anticipated that there would be a loss, he would have taken them out.

The evidence will show that Mr. Childs, made some enquiry. He said, I might be able to interest some parties in buying the bank. How much doubtful stuff do you think you have got? Mr. King said, I don't know, it might run three or four hundred thousand dollars, doubtful paper, not bad paper, not paper ordered charged off,—doubtful

paper,—not in the light of subsequent events, proving to be bad paper, but in the light of circumstances then, as it appeared to those men at that time. Mr. Childs went to Wichita and interested some parties, and they came over here. The evidence will show that they made a rather hasty examination of the note case, and asked Mr. King if the directors would guarantee the paper, and the evidence will show that that is a very ordinary request from men who are purchasing, or negotiating for the purchase of a bank.

To this, Mr. King replied, No. And the reason why is this; 73 percent of this stock was owned by the Adams estate. There is probably no way the executor of that estate could get authority to guarantee the paper of this bank, and the rest of us are not going to guarantee the paper when 73 percent of the paper is owned by some one [fol. 111] else; I think we can raise from our stock-holders, — am satisfied we can, $100,000, if you want to take it.

That was about three o'clock in the morning of a very stormy night. One of the men from Wichita began to sleep in his chair, and finally he said that he must go home. The evidence will show that he said he would be back the next day, but for some reason, he did not return.

As to these conferences that counsel has referred to, in dark ways, I will say to you that the testimony will be that this meeting with the Wichita parties is the only one that took place; and there will be no testimony, no positive testimony from any source, to the contrary.

After this bank closed its doors and went into the hands of the receiver, the banking department issued certificates against the state guaranty fund, and there has been paid out of the assets of this bank, 30 percent of the claim of this plaintiff, which so far has not been admitted in the pleadings, but will be covered by the instructions of the court.

I want to leave this thought with you, gentlemen, that the testimony will show, from the experts on banking matters and the departmental representatives, that the director who reasonably and conscientiously performs his functions as a director, who examines his bank from time to time, and knows, if possible, its condition, who works for its benefit, and who honestly believes that this bank will work out, is not within the provisions of that law creating liability

against him, because that statute provides that he must know of the failing condition of the bank, and then, having such knowledge, assent to the deposit.

[fol. 112] We believe that these men, honestly and conscientiously, to the best of their ability, were cooperating with the banking department of the State of Kansas during all of this time; that they honestly believed that they would work it out; and then they paid their 100 percent assessment upon their capital stock, and we will not expect a further mulcting of the defendants to the extent of the amount prayed for in this suit.

At no time has there been, nor will there be, any contention, or any evidence offered, that any of these men profited one penny. Their books reflect the true condition, no false entry, no attempt to cover up. The evidence will show that the entire situation was created through failure to collect the paper in the note case.

Mr. Geddes: The plaintiff now moves the court to strike out and take from the consideration of the jury all statements of counsel for defendants as regards directions given by the bank commissioner of the State of Kansas with reference to the operation and management of the Butler County State Bank;

And plaintiff further moves the court to strike out and take from the consideration of the jury, and instruct the jury not to consider, all further statements of counsel as regards what constitutes a director or officer who comes within the provisions of the statute under which these actions are brought;

For the reason that same constitute no defense to this action and no part of a defense; and for the further reason that no direction given by the bank commissioner of the State of Kansas, directing any officer, or any of the defendant officers of the Butler County State Bank to proceed, in violation of the plain terms of the law, would constitute a defense in this action.

[fol. 113] It being the hour of twelve A. M., the further hearing of this case is adjourned to 1:30 P. M. of this day, Tuesday, March 16th, 1926.

Afternoon Session

Tuesday, March 16th, 1926—1:30 P. M.

The Court: As the court understands the situation, the banking department cannot supersede the management of the bank, its officers and directors, in the management of the affairs of the bank; and what the commissioner may think about the bank's condition is not controlling and cannot be urged as defense for such officers and directors as may fail to do their duty; but the court feels that evidence as to the conduct of the state bank commissioner and his attitude toward the bank may be competent as touching upon the knowledge of such officers as to the real condition of the bank; and the jury is now advised and will be instructed that any evidence which may be received touching upon the acts and conduct of the state bank commissioner with reference to this bank must not be considered as a defense against the liability of the defendants, for things necessary to be done, but may be offered only as such may assist the jury in determining as to the extent of the knowledge of the defendants, if it does assist in this respect, as to the real condition of this bank.

In view of this, the motion of the plaintiff to strike out certain portions of the opening statement of counsel for defendants is overruled, and the evidence will be received only for that purpose.

Mr. Geddes: In view of the various statements of counsel for the defendants, I want to supplement my statement. [fol. 114] The evidence in this case will disclose, I think, that upon the closing of the Butler County State Bank, March 30, 1923——

Mr. Brewster: The defendant C. L. Harris, as executor, objects to any further statement to the jury on the part of counsel for the plaintiff in this case for the reason that no such statement is provided for in the code of civil procedure.

Overruled.

Mr. Geddes: —and after it had been in the hands of the bank commissioner, and after the receiver had been appointed, that there was issued to the plaintiff in this case what is known as a guaranty fund certificate for the amount

of the deposits, that—I read from the petition—which was then in the bank at the date of the closing, which was approximately $22,000.00.

The evidence will disclose that some time after that, the then receiver of the Butler County State Bank, and the proper authorities, declared a dividend of 20 per cent; that when Mr. Ramsey, plaintiff in this case, presented his certificate to the assstant receiver of the bank here in El Dorado, Mr. Benson, under instructions from Mr. Peterson, then bank commissioner, refused to pay that dividend; that thereupon Mr. Ramsey commenced in the supreme court an action against Mr. Peterson, as bank commissioner, and I think Mr. Benson as assistant receiver, and Mr. —— as receiver of the Butler County State Bank, to compel them to pay him a dividend of 20 per cent, the same as had been paid all other depositors who didn't have certificates.

The evidence will disclose that the supreme court directed the bank commissioner and the receiver of that bank to pay Mr. Ramsey his 20 per cent dividend, and it was accordingly paid.

[fol. 115] That some time after, a dividend of 10 per cent was declared upon the certificate, and that Mr. Ramsey was paid that dividend of ten percent; so that the actual amount due him now is the sum of approximately $22,000.00 as against these defendants, with 6% interest from March 30, 1923, less the amount he has actually received under these two dividends, and as to that particular phase of the case, at the proper time, the court will instruct you in that regard.

The Court: For the purposes of this trial, it is admitted that the defendant King, at all times mentioned in the amended petition herein, was a director and president of the Butler County State Bank.

It is further admitted that the defendant Ferry——

Mr. Malloy: We will admit that he was a director of the bank at all times mentioned in the amended petition of the plaintiff; and on and after January, 1922, he was vice-president and cashier of the Butler County State Bank.

The Court: It is further admitted that the defendant Ewing, at all times mentioned in the amended petition, was a director of said bank; and that he was cashier of said bank from January, 1917, until superseded by Mr. Ferry in January, 1922.

Mr. Geddes: It is further admitted, for the purposes of this case, that at all times referred to in the amended petition herein, the Butler County State Bank of El Dorado, Kansas, was a state bank, duly organized according to law, and under the laws of the State of Kansas, doing business as a banking institution at El Dorado, Kansas, and as a state bank.

The Court: All these admissions are made subject to the right of the defendants to object to the introduction of any evidence under the pleadings in this case.

[fol. 116] PLAINTIFF'S EVIDENCE

G. L. RAMSEY, called as a witness in behalf of the plaintiff in the case of G. L. Ramsey versus E. F. Adams et al., in substance testifies as follows:

Q. You may state your name to the court and jury.

Mr. Brewster: The defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, desires to object to the introduction of any testimony in this case, for the reason that the petition filed herein does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against the defendant C. L. Harris, as executor of the estate of T. A. Kramer.

And for the further reason that Section 9-163, or Article 1, Chapter 9, of the Revised Statutes of 1923, under which this action is brought, and which seeks to impose liability upon the president, director, manager, cashier, or other officer of any banking institution, for deposits received after he shall have knowledge of the fact that such bank is insolvent, or in a failing condition, is in violation of the Fourteenth Amendment of the Constitution of the United States of America; in that it seeks to deprive such persons of property with- due process; and in that it seeks to deprive, and will if enforced, deprive this defendant of his property without due process; and in that it denies to this defendant, in the jurisdiction of the State of Kansas, equal protection of law.

And for the further reason that said section is violative of Section 5 of the bill of rights of the Constitution of the

State of Kansas, in that it seeks to deprive, and will, if en-
[fol. 117] forced, deprive this defendant of the right of trial by jury, in this case, and on a material issue in said case, on which he is entitled, under the common law, to trial by jury;

And for the reason that Section 9-164 of Article 1, Chapter 9 of the Revised Statutes of the State of Kansas of 1923, is violative of the Fourteenth Amendment to the Constitution of the United States of America; in that it seeks to deprive, and will, if enforced, deprive such person or persons of property without due process of law; and in that it denies to this defendant, in the jurisdiction of the State of Kansas, equal protection of law;

And further that said section of the Statutes of the State of Kansas is violative of Section 5 of the bill of rights of the Constitution of the State of Kansas; in that it seeks to deprive, and will, if enforced, deprive this defendant of the right of trial by jury in this case, on material issue in said cause, on which he is entitled, under the common law, to trial by jury.

Mr. Malloy: The defendants, C. L. King, H. F. Ferry and A. B. Ewing, object to the introduction of any testimony in this case for the same reasons as stated in the objection on behalf of the Defendant C. L. Harris.

Mr. McKay: The defendant, E. F. Adams makes the same objection to the introduction of any testimony in this case.

Mr. Bond: The defendant, L. D. Hadley, joins in the objection as made by the defendant C. L. Harris; and makes the further objection to the introduction of any testimony in this case, that the plaintiff in this action has no legal capacity to bring this suit, under the statute under which this suit is brought, and under which statute he seeks to establish liability.

[fol. 118] Mr. Woodward: The same objection is made on behalf of the defendant, Geo. W. Lyon.

The Court: All of which are overruled.

Mr. Geddes: The plaintiff now moves the court to strike from the record the objections offered on behalf of the defendants, Harris, Adams, King, Ferry, Ewing, Hadley and Lyons, for the reason that the same needlessly encumber the record, and are res adjudicata in these cases.

The Court: The motion is overruled.
(Transcript 5-6.)

My name is G. L. Ramsey and have lived in Butler County, Kansas, thirty or forty years am in the oil business and was formerly in the cattle business and farming. I have known C. L. King twenty years, have known H. F. Ferry practically ever since he came here, have known the defendant L. D. Hadley a great number of years and have known the defendant- A. B. Ewing, G. W. Lyon and E. F. Adams a good many years. I had a transaction with the Butler County State Bank in El Dorado, Kansas, in March, 1923. The paper marked Exhibit 1, which you hand me, I have seen before, it was delivered to me or to the bookkeeper, I think, after the bank was closed. On March 6th, 1923, I had on deposit in the Butler County State Bank of El Dorado, Kansas, $2,168.85. On March 8th, 1923, I deposited in the Butler County State Bank $40,000.00 and on March 12th, 1923, I deposited $1,401.17 and on March 13th, $1,600.00 and on March 26th, $3,615.60. Deposit slips were given me when such deposits — made and I have such deposit slips. On the 30th day of March, 1923, there remained in my account in the Butler County State Bank at the time it [fol. 119] closed its doors $22,762.16 and it has not been paid to me. I do not know what particular person took these deposits unless the deposit slips show it. Exhibit 2 is the deposit slip given to me or my bookkeeper on March 26th, 1923, when I made the deposit of $3,615.60 it later came into my possession.
(Transcript 7-9.)

Exhibit 2-3-4-5 offered in evidence by plaintiff.
(Transcript 9-10.)

Exhibit 1 offered in evidence by plaintiff.
(Transcript 10.)

Some time after March 30th, 1923, I received a guaranty fund certificate for $22,726.16. I remember when an announcement was made that a dividend would be paid on these certificates. I presented this certificate to someone at the Butler County State Bank.

I have never received any part of that $22,726.16 except the two dividends that have been paid on it.

(Transcript 10-11.)

W. R. CHILDS, called as a witness on behalf of the plaintiff, testified in substance as follows:

I live at El Dorado, Kansas, and have been assistant receiver of the Butler County State Bank of El Dorado, Kansas, since September 24th, 1925. The paper you hand me is a report of the proceedings of quarterly annual and special meetings of the Board of Directors of the Butler County State Bank, starting with June 30, 1921, it is one of the records of the bank that came into my possession.

(Transcript 12-12.)

[fol. 120] H. F. FERRY, called as a witness on behalf of the plaintiff, testified in substance as follows:

I am one of the defendants in this case. I have seen the book entitled "Record of the Reports of the Proceedings of Quarterly Annual and Special Meetings of the Board of Directors of the Butler County State Bank of El Dorado, Kansas," it is one of the records that was kept in the bank prior to the time it was closed. The writing H. F. Ferry on the page my attention is directed to is my signature. The writing above the signature is two different hand-writings, I am familiar with part of it, part of it is my own hand-writing. The date and the heading—stock directors meeting—and the first line is my hand-writing.

To which the defendants, and all of them, object as being incompetent, irrelevant and immaterial, no proper foundation having been laid.

The Court:

Q. Is that a record of the meeting of the stock holders, Mr. Ferry?

A. It is one of the records.

Q. Is that a record, in that particular place, of the minutes of some meeting held in the bank?

A. Yes, sir.

Mr. Malloy: The defendants make the further objection that the book has not been offered in evidence, and the testimony of the witness is not the best evidence of its contents, the book itself being the best evidence.

Objection sustained.

Mr. Geddes: I now offer in evidence, on behalf of the plaintiff, the writing which the witness, H. F. Ferry has just identified as being his signature; and also the writing which he has just identified as being in his handwriting, in the book which the witness now holds in his hand, and I ask [fol. 121] that the witness read that writing to the jury.

Mr. Bond: For what purpose is that offered?

Mr. Geddes: This is a stockholders meeting.

The defendants renew their objection, as not the best evidence, and as being incompetent, irrelevant and immaterial.

Objection overruled.

"On motion by C. L. King and seconded by H. F. Ferry the old directors with the exception of G. W. Lyon are re-elected. The following are the names of the new board of directors: C. L. King, A. B. Ewing, T. A. Kramer, L. D. Hadley, H. F. Ferry. Meeting of stockholders adjourned.

(Signed) H. F. Ferry."

The portion I have read is in my handwriting. These minutes were kept and put in the book probably the same day or possibly during the meeting. The other handwriting I have identified is Mr. Quinn's he was an employee of the Butler County State Bank. That portion of the writing my attention is directed to, following the name of H. F. Ferry to the words directors meeting and the five lines of writing following and the writing H. F. Ferry is my hand writing.

Mr. Geddes: I now offer in evidence the writing that has been identified by the witness, and ask that he read it to the jury.

To which the defendants object as being incompetent, irrelevant and immaterial, and not the best evidence.

Overruled.

Directors meeting. The meeting was called to order by C. L. King on motion of H. F. Ferry, seconded by A. B. Ewing. The old officers were re-elected. After talking [fol. 122] over conditions and making recommendations as before related the meeting adjourned.

There is no date. I presume it was the meeting following the stockholders meeting, that is the usual custom.

When the Butler County State Bank closed on the 30th day of March, 1923, all records were in the bank. I do not know where the minute book, containing the minutes of the stockholders meeting for the years 1922, 1921 and 1920 are.

The date just above the writing which I have identified as my own in the book is January 5th, 1923, I was present at that meeting and it was held approximately on that date.

Mr. Geddes: I now want to offer in evidence, and ask that the witness read to the jury the handwriting which he has identified as being, in his judgment, the handwriting of Mr. Quinn, that is shown on the page from which the witness has already read.

To which the defendants object as being incompetent, irrelevant and immaterial.

Overruled.

A. (Reading:) January 5th, 1923. Stockholders meeting. Meeting was called to order by Mr. Hadley, temporary chairman——

I presume that meeting was held in the directors room. I have in my possession the minute book of the meeting of the stockholders of the Butler County State Bank of January 1920 and the minute book of the directors meeting of that bank held in January 1920. The records show that this is the minutes of the stockholders meeting of the Butler County State Bank held in January 1920 and the minutes of the directors meeting of the Butler County State Bank [fol. 123] held in January 1920. The handwriting is A. B. Ewing's. As I remember he was a director of the Butler County State Bank at that time.

Mr. Geddes: I now offer in evidence the minutes of the meeting of the stockholders of the Butler County State Bank, of January 1st, 1920.

To which the defendants object as being incompetent, irrelevant and immaterial, and too remote.

The Court: Why do you go back so far, Mr Geddes?

Mr. Geddes: Because Mrs. Adams denies liability, and so does G. W. Lyon.

Mr. McKay: Mrs. Adams, does not deny that she was a director the forepart of the year 1920. She alleges that she ceased to be a director on November 16th, 1920.

Objection sustained.

Mr. Geddes: I am offering it for the further reason, as being competent evidence for the purpose of showing knowledge on the part of these defendants, as to the condition of the bank. I have a right to show how long these men were directors of the bank, and then connect up the indebtedness.

To which the defendants object as being too remote and incompetent, irrelevant and immaterial.

Mr. Malloy: We admit that they were directors at that time.

The Court: On the theory that it may not be in the record as an admission, I will overrule the objection.

Mr. Geddes: I will read that part with reference to the election of the directors.

(Reads:) Stockholders meeting, Butler County State Bank, January 1st, 1920. Annual stockholders meeting, [fol. 124] January 1st, 1920. The following shares were represented:

J. B. Adams	695
E. F. Adams	40
C. L. King	20
A. B. Ewing	20

being 775 out of a total of one thousand shares. The meeting, by vote of stock, elected J. B. Adams President and A. B. Ewing Secretary of the Stockholders organization.

By vote of shares, unanimously cast, the following directors were elected for 1920; J. B. Adams, C. L. King,

H. F. Ferry, A. B. Ewing, E. F. Adams, Geo. W. Lyon, T. A. Kramer.

I can find the minutes of the stockholders meeting of January 1921. The date is January 4th, 1921. The typewritten sheet under the head Stockholders Meeting is continued in the book marked minute book Butler County State Bank 1921. I was present at that meeting in my judgment this is the minutes of the stockholders meeting of the Butler County State Bank for January 1921. **The handwriting** under the words secretary is the hand of A. B. Ewing and the handwriting over the word president is the hand writing of J. B. Adams, and this record is one of the records kept in the Butler County State Bank to the time that it was closed March 30th, 1923.

Mr. Geddes: I now offer in evidence the record of the stockholders meeting of the Butler County State Bank, of January, 1921.

Mr. Malloy: For what purpose?

Mr. Geddes: For the purpose of showing knowledge.

[fol. 125] Mr. Malloy: To show what directors were elected?

Mr. Geddes: Yes.

Mr. Geddes (reading): At the meeting of the stockholders of the Butler County State Bank, held January 4, 1921, the following shares were represented:

J. B. Adams	695
H. F. Ferry	100
C. L. King	20
A. B. Ewing	20
L. D. Hadley	5
E. F. Adams	40

being a total of 880 out of one thousand shares. By vote of all the shares, J. B. Adams was elected president of the stockholders organization, and A. B. Ewing secretary. By vote of all the shares, the following directors were re-elected for the year 1921, or until their successors are chosen: J. B. Adams, C. L. King, A. B. Ewing, L. D. Hadley, H. F. Ferry, T. A. Kramer, Geo. W. Lyon.

Q. Now, Mr. Ferry, I wish you would find the minutes of the January, 1922, meeting of the stockholders of the Butler County State Bank?

A. Yes, sir.
Q. What is the date of that meeting?
A. January 5th, 1922.

Mr. Geddes: I now offer in evidence the minutes of the stockholders meeting of the Butler County State Bank, held January 5th, 1922.

[fol. 126] Mr. Malloy: For what purpose?

Mr. Geddes: For the purpose of showing the directorship of this bank, and for the purpose of proving knowledge.

Mr. Malloy: I don't understand what you mean by knowledge.

Mr. Geddes (reading): January 5th, 1922, Stockholders meeting, Butler County State Bank, with 905 shares of stock represented. Meeting called to order by Mr. Kramer. H. F. Ferry elected secretary. Motion made and seconded and carried to have the secretary cast the vote of the 905 shares of stock present for the following directors: C. L. King, T. A. Kramer, Geo. W. Lyon, A. B. Ewing, L. D. Hadley, H. F. Ferry.

The resignation of A. B. Ewing, as cashier, accepted. Stockholders meeting adjourned.

H. R. Ferry, Secretary.

Q. What I have just read is in your handwriting, Mr. Ferry?
A. Yes, sir.
Q. Now, Mr. Ferry, I direct your attention to the seventeen lines following your signature, H. F. Ferry, secretary; and I ask you if that is in your handwriting?
A. It is.
Q. And is that the minutes of the meeting of the board of directors, held immediately after the stockholders meeting, of January, 1922?
A. It is.

[fol. 127] Mr. Geddes: I now offer in evidence the minutes of the directors meeting, of the Butler County State Bank of El Dorado, Kansas, held in January, 1922.

To which the defendant object- as being incompetent, irrelevant and immaterial, being already in evidence as an admission.

Overruled.

Mr. Geddes (reading): The newly elected board of directors was then called to order, and Mr. Kramer was elected chairman of the board and Mr. King president. H. F. Ferry was elected vice-president and cashier and L. D. Hadley assistant cashier.

After talking over the matters pertaining to the welfare of the bank, the meeting was adjourned.

C. L. King, salary $6,000.00. Under the word, Bond, $10,000.00. H. F. Ferry, salary $2,700.00, bond $10,000.00. L. D. Hadley, salary $2,100.00, bond $10,000.00.

The Court: That is immaterial.

Witness excused.

Mr. Geddes: I now offer in evidence the American Bank Reporter of March, 1922; or rather, of the American Bank Reporter of March, 1922, page 934, and particularly that portion thereof referring to the Butler County State Bank of El Dorado, Kansas, and giving the names of its officers and directors.

Mr. McKay: The defendant E. F. Adams objects to this offer. The American Bank Reporter is a private publication. It has not been properly identified. There is no showing of proof here, or offer to show that Mrs. Adams knew the contents of this publication, or that she could be bound by the fact that her name is contained therein.

The defendant E. F. Adams further objects for the reason that said publication is incompetent, irrelevant and imma- [fol. 128] terial, not binding on this defendant in any respect; it is not shown from what source the information contained in this publication was received; and this defendant objects for the further reason that this evidence does not show, or pretend to show, that she was actually a director of the bank, either de jure or de facto.

The Court: Mr. Geddes, do you expect to show that Mrs. Adams directed this publication to be made as it is, or knew that it was being made as it is, and carried in this book?

Mr. Geddes: That is impossible. I could not do it.

The Court: The objection will be sustained, then, unless you expect to show, by the records, here or otherwise, that Mrs. Adams was a director of the bank at that time.

Mr. Geddes: The plaintiff now offers to prove that page 934 of the American Bank Reporter for March, 1922, and that portion thereof referring to the Butler County State Bank of El Dorado, Kansas, shows the name of E. F. Adams, as vice-president, under the words, Butler County State Bank.

To which the defendant E. F. Adams objects for the reasons stated above.

Objection sustained.

Mr. Geddes: The plaintiff now offers to show that Rand & McNally's Bank Director and Bank Register——

Mr. McKay: I ask that he produce those books.

Mr. Geddes: Very well. The plaintiff now offers in evidence Rand & McNally's Bank Director and Bank Register for July, 1922.

Mr. McKay: The defendant E. F. Adams objects to the offer of Rand & McNally's Bank Director and Bank Register for the same reasons as those stated in the objection to [fol. 129] the offer of the American Bank Reporter.

The Court: The objection is sustained.

Mr. Geddes: The plaintiff now offers to show that the July, 1922, volume of Rand & McNally's Bank Directory and Bankers Register, blue book, at page 2327, under the words, El Dorado, Kansas, Butler County State Bank, and under the heading, Directors of National, State, Savings Banks and Trust Companies; shows the name of E. F. Adams.

Same objection as heretofore stated.

Sustained.

Mr. Geddes: The plaintiff offers in evidence the same record for the year 1923.

To which the defendant E. F. Adams objects for the reasons heretofore stated.

Sustained.

Mr. Geddes: The plaintiff now officers to show that the same Rand & McNally's record for the year 1923, under the heading of Directors National, State and Savings Banks, shows the name of E. F. Adams.

Same objection.
Sustained.

Mr. Geddes: The plaintiff further offers to show that the same record and same book, for January, 1922, under the same heading, shows the name of E. F. Adams.

Same objection.
Sustained.

(Correction: The title, Rand & McNally's Bank Director and Bank Register, should in all cases read, Bank Directory and Bankers Register.)

Direct examination:

[fol. 130] A. B. Ewing, called as a witness on behalf of the plaintiff, testified, in substance, as follows:

I am one of the defendants in this case. In the book called "Record of Reports and Proceedings of the Quarterly, Annual and Special Meetings of the Board of Directors of the Butler County State Bank," on the page under the words "Report of Proceedings on Quarterly Meeting" and the next two pages, is Mr. Quinn's handwriting. The signature is in my handwriting. I examined the two preceding pages before I signed them. That is a statement submitted at the time by the bookkeeper, and that part there, with my signature, is a report of the meeting of the Board of Directors of the Butler County State Bank held June 30, 1922.

The typewritten lists, under the head, "The following notes were ordered charged to profit and loss," was there when I signed my name to the minutes. The pages commencing with the words, "June 30, 1921," down to and including my signature, is the minutes of that meeting of the Board of Directors of the Butler County State Bank. I think the words, "C.W. Meredith Construction Company" was the name of the maker of a note for $6,440.00, and the notation in lead pencil figures, 21,315, the number of the note.

We had a profit and loss account that we sometimes charged notes in where they were excess loans. It might have been put in here temporarily, and then taken back and put in the business. When I say "put in there tem-

porarily," I mean taken out of the business of the bank and charged off the books.

The word "dates" probably indicates the date of the note. The figures under the word "due" the length of [fol. 131] time the note was to run. The words under "Name of borrower," means the name of the maker of the note. The words under "Security," indicates whether there was a mortgage or a contract to secure the note, or whatever there was in the way of security.

Mr. Geddes: I now offer in evidence, on behalf of the plaintiff, that portion of the typewritten page which has been identified by the witness, as being a part of the minutes of the Board of Directors Meeting, of the Butler County State Bank, June 30, 1921, commencing under the word Date.

Well, I offer the whole page in evidence, and I want to read it to the jury at this time.

Mr. McKay: The defendant, E. F. Adams, objects to this offer as being incompetent, irrelevant and immaterial, and not binding upon her.

The Court: The objection is sustained so far as Mrs. Adams is concerned.

Mr. McKay: I make the same objection to any testimony now or hereafter offered by the plaintiff, as to Mrs. Adams, and move the court to strike it out and withdraw it from the consideration of the jury so far as Mrs. Adams is concerned.

There being no further objection, the typewritten page identified by the witness is read to the jury by Mr. Geddes, as follows:

[fol. 132]

Date.				
11-30-20	Due in six mo.	E. J. Andrews, Amt. Security, Mortgage	$838.58	
11-26-20	6 mo.	E. J. Andrews	$16,836.82	Mort.
2- 1-21	6 mo.	"	19,775.95	"
5-18-21	7-19-21	"	12,242.40	"
5- 8-21	90 days	Noah Artz & Sons	15,000.00	"
11- 8-20	demand	"	1,380.79	"
11- 8-20	6 mo.		13,771.20	"
3- 9-21	1 day	L. L. Beye	1,500.00	Contract
3- 5-21	1 day	"	4,000.00	"
3- 5-21	6 mo.	"	27,000.00	"
3- 5-21	6 mo.	"	27,000.00	2
11- 1-20	Demand	Empire Gas & Fuel Co	11,697.02	
5-23-21	90 days	"	25,000.00	
6-22-21	30 "	"	12,500.00	
4-13-21	El Dorado Hotel & Th. Co		30,000.00	1st mort. bonds

10-25-18	Installments	Fidelity Ref Co.	3,816.00	Assign's
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
6-24-20	6 mo.	"	22,000.00	"
9-25-20	3 mo.	"	23,558.00	"
11-18-20	Demand	"	7,000.00	"
12-31-20	"	"	2,200.00	"
9-24-20	3 mo.	"	10,000.00	"
6-16-21	60 days	"	7,620.00	"
4-23-21	7- 4-21	J. G. Robinson	5,000.00	Stock
1-17-21	8-16-21	"	1,737.41	"
6-22-21	90 days	L. M. Robinson & W. P. Knox	5,000.00	"
4-25-21	7- 9-21	L. M. Robinson	4,400.00	"
6-17-20	1-10-21	"	11,330.00	
[fol. 133]				
4-23-21	7-26-21	Mid-Co. Packer Co	2,000.00	"
4-23-21	7-10-21	"	2,200.00	"
4-23-21	7-15-21	"	9,000.00	"
4-23-21	8-16-21	"	3,000.00	"
4-23-21	7-20-21	"	3,000.00	"
6-27-21	6 mo.	"	9,360.00	"
1- 6-21	3 mo.	J. E. Sharp	10,900.00	W. Deed
12-27-20	2-14-21	"	22,465.53	Chat.mort.
6- 8-21	8-22-21	A. G. Williams	20,000.00	Contract
6- 8-21	8-22-21	"	20,000.00	"
6- 8-21	8-22-21	"	20,000.00	"
6- 8-21	8- 8-21	"	15,000.00	"
6- 8-21	8-20-21	"	10,000.00	"
6- 8-21	8-30-21	"	9,500.00	"
6-21-21	City W.	City of Florence Florence, Kan	9,317.81	City War

[fol. 134] By Mr. Geddes:

Q. Now, Mr. Ewing, I observe a line drawn through "C. W. Meredith Contracting Company," and the words, "City of Florence, Florence, Kansas," written in. Then, you use three words "do." What does that mean?

A. I think it would be the Meredith Company.

6-21-21	City Warrants	Meredith Cont. Company	14,022.90	City War
6- 7-21	"	"	6,030.00	"
6- 7-21	"	"	16,124.00	"
"	"	"	117.58	"
"	"	"	400.00	"
5-16-21	"	"	9,061.78	"
6-22-21	6 mo.	"	15,638.08	Contract
10-15-22	10-15-20	"	5,400.00	"
10-15-19	8-15-20	"	6,400.00	"

6-22-20	6 mo.	Meredith Cont. Company	....	20,000.00	Contract
"	"	"	....	"	"
"	"	"	....	"	"
"	"	"	....	"	"
7-21-20	"	"	....	10,000.00	Contract
11-20-20	Demand	"	....	25,000.00	"
8-26-20	"	"	....	7,000.00	"
12-22-20	6 mo.	Ed. H. Meredith.....		25,656.74	Stock
				762,423.24	

[fol. 135] By Mr. Geddes:

Q. Now, Mr. Ewing, this meeting of the board of directors of the Butler County State Bank, that was held in June, 1921, the minutes of which you have identified here, was held on what date?

A. June 30, 1921.

Q. Now, commencing with this item here, item 6-22-20, due six months, Meredith Contracting Company, $20,000.00; I will ask you if it is not a fact that at the time of this meeting, that paper was not then six months past due?

A. Yes, sir.

Q. And then the next item, 6-22-20, due in six months, C. W. Meredith Contracting Company, $20,000.00; I will ask you if that paper was not at that time six months past due?

To which the defendants object as being immaterial.

No ruling.

(No answer.

Q. And the item 6-22-20, due in six months, C. W. Meredith Contracting Company; I will ask you if that item had not been due for six months at that time?

A. Yes, sir.

Q. Then, here is an item of 7-21-20, due in three months, C. W. Meredith Contracting Company, $10,000.00; I will ask you if that item had not been due for a number of months at the time of this meeting?

A. Since October 20.

Q. And then, here is an item of 11-20-20, due on demand, C. W. Meredith Contracting Company, $25,000.00; that would be due any time you demanded payment?

A. Yes, sir.

[fol. 136] Q. And then there is an item of 12-22-20, due in six months, Ed. H. Meredith, $25,653.74; that item was due at the time of that meeting, was it not?

A. Yes, sir.

Q. Then, this item, 10-30-20 and 10-26-20, E. J. Andrews, $16,836.82; that item was past due at the time of that meeting, was it not, Mr. Ewing?

A. It was due in April.

Q. And the item of 2-1-21, due in six months, E. J. Andrews, $19,775.95; that was then 30 or 35 days past due, was it not?

A. It was due in August.

Q. And this meeting was held on the 30th of June?

A. Yes, sir.

Q. And here is an item, Mr. Ewing, of 5-8-21, due in 90 days, Noah Artz & Son, that was past due?

A. No.

Q. That would be due in August?

A. Yes, sir.

Q. And then here is an item, 11-8-20, due in six months, Noah Artz & Son, $13,771.20; that item was past due at that time?

A. Yes, sir.

Q. And then there is an item of 6-24-20, due in six months, Fidelity Refining Company, $22,000.00; that was practically four, or six months, past due?

A. It was due December 20.

Q. That item was practically six months past due at the time of this meeting?

A. Yes, sir.

Q. Now, we will take this item, 9-25-20, due in three months, Fidelity Refining Company $25,558.00 (or $23,-558.00) that was about two months past due?

[fol. 137] A. That would be due in December.

Q. That item was practically six months past due at the time of this meeting?

A. Yes, sir.

Q. Then, there is another item, 9-24-20, due in three months, Fidelity Refining Company, $10,000.00; that item was practically six months past due, or more, at the time of this meeting in June, 1921?

A. Yes, sir.

Q. Now, Mr. Ewing, do you know L. M. Robinson?

A. Yes, sir.

Q. I will ask you if it is not a fact that he was connected with the Mid-Co Packer people?

A. Yes, sir.

Q. He was a customer of the Butler County State Bank at that time, was he not?

A. Yes, sir.

Q. He is not one of the Towanda Robinsons?

A. No, sir.

Q. I notice here an item, 6-17-20, due 1-10-21, L. M. Robinson, $11,530.00. That was five months, or more, past due at the time of this meeting?

A. Yes, sir.

Q. Mr. Ewing, I call your attention, specifically, to the following items: 6-8-21, due 8-22-21, A. G. Williams, $20,000.00; and on the same identical dates A. G. Williams $20,000.00; A. G. Williams, $20,000.00; and A. G. Williams, $15,000.00; and I will ask you, Mr. Ewing, if it is not a fact that there $75,000.00 of A. G. Williams' paper in the Butler County State Bank, that would be due within a few days from this meeting, paper that was dated 6-8-21 and due 8-2-21?

A. The meeting was on June 30, 1921.

[fol. 138] Q. Now, that $75,000.00 worth of paper would (be) due within two months after this meeting?

A. If that date is correct.

Q. Now, Mr. Ewing, I call your attention to the item, 6-8-21, due 8-20-21, $10,000.00 A. G. Williams; that item would soon be due, at the time of this meeting of June 30, 1921?

A. Yes, sir.

Q. Now, I call your attention to the item, 6-8-21, due 8-30-21, A. G. Williams, $9,500.00; that item would also be due within two months after this meeting?

A. Yes, sir.

Q. You know A. G. Williams?

A. Yes, sir.

Q. Is it not a fact, Mr. Ewing, that to your knowledge, he was connected with the Meredith Contracting Co.?

A. He did business with them. I do not know the nature of his connection with them.

Q. He was a customer and a borrower of your bank?

A. Yes, sir.

Q. Now, were you acquainted with L. L. Beye?

A. Yes, sir.

Q. What business was Mr. Beye engaged in around here during the years 1921, 1922 and 1923?

A. Paving contractor and road builder.

Q. He was a customer and a borrower of your bank during those years, was he not?

A. Yes, sir.

Q. When the directors of the Butler County State Bank had this meeting of June 30, 1921, and these various notes that I have called to your attention, came up, was there any discussion among the directors present about these notes? [fol. 139] A. Yes, sir.

Q. I notice that this minute book, the report of these minutes, says, under the language, Directors Present: T. A. Kramer, C. L. King, A. B. Ewing, H. F. Ferry, L. D. Hadley, J. B. Adams. These minutes are correct?

A. Yes, sir.

Q. And those gentlemen were present at that meeting?

A. They must have been.

Q. Now, is it not a fact, Mr. Ewing, that at that meeting, Mr. King, Mr. Ferry, Mr. Kramer, and all of you gentlemen that were present there at that meeting, went over every item of the indebtedness that I have called your attention to, and that we have touched upon here, and discussed it?

A. Yes, sir.

Q. And if the indebtedness was thirty days, or sixty days past due, or if it was ninety days or more past due, you talked about it there among yourselves, did you not?

To which defendants object as being leading and suggestive.

Overruled.

(No answer.)

Q. Did you talk about these items that were past due?

A. Yes, sir.

Q. And did you discuss among yourselves the nature of the security for these various loans?

A. Yes, sir.

Q. Did you discuss among yourselves the total amount of this paper?

A. We discusseed it in every manner.

[fol. 140] Mr. Woodward: I ask that the jury be instructed not to apply any of this testimony to the defendant Lyons, as he was not present at this time.

Overruled.

Cross-examination:

This list counsel has been reading from is excess loans listed on that paper. Many of them had municipal warrants as security. The Meredith paper carries a notation under the head "Security Contracts." That refers to the fact that these parties were engaged in carrying on some project, and that upon the completion of that project it was expected that the money would be paid to the bank. In many cases the contracts were assigned to the bank. They were paving contracts and ditching contracts. The contracts provided for payments to be made upon estimate. They were regarded as high-class form of securities. These contracts that the Meredith Construction Company had, had not been completed at the time of that meeting. Several of them were being carried on. I can't tell when the Mid-Co Packer Company renewed its note. It was renewed and the interest paid. We would charge out of the note case and out of the bank paper certain excess loans and place them in the profit and loss account. Where there was a technical violation of the rules of banking, where there was a loan in excess of the amount that we were permitted to lend to any one borrower we would take the excess loan out of the note case and later put it in the profit and loss account, and often later, collect it and put it back. This notation of this $6,400.00 item of the Meredith Construction Company was charged out because it was an excess loan.

(Transcript 33-34.)

[fol. 141] Redirect examination:

I did not say it was an excess loan. It, with some of the other paper, made an excess loan. On the other page of this printed typewritten page they were all excess loans.

When Mr. King, Mr. Ferry and Mr. Hadley, the Directors of the Butler County State Bank, at the meeting, discussed this paper, we knew that the loans there listed were all excess loans. We knew that every one of these loans were in excess of what we could legally loan. It was prob-

ably discussed between the directors. I did not say the Mid-Co Packer Company loan was paid. The interest was paid and the notes renewed.

Following that meeting in June the directors of the bank met quarterly, and at each quarterly meeting went over the notes that were in the bank, discussed the notes, the past due paper, the nature of the security, the excess loans and examined them all. The paper designated "Official Statement of Financial condition of the Butler County State Bank at the close of business on the 17th day of March, 1923," I don't remember anything about. I haven't any personal recollection of being present at the meeting.

I am familiar with the handwriting of C. L. King and H. F. Ferry. The handwriting on the back of this paper is the handwriting of H. F. Ferry, and the words "C. L. King" is the handwritig of C. L. King, defendant in this case.

The name "H. F. Ferry," in the verification, is the handwriting of H. F. Ferry, defendant in this case.

Q. Now, Mr. Ewing, I notice here, among the items of excess loans, J. B. Adams and C. L. King, dated 10-2-20, due 4-2-21, amount $10,000.00, security, personal note——

[fol. 142] A. That is not among the excess loans, is it?

Q. Now, with reference to the particular note that I have called your attention to, is that the names of the makers, the date of the making of the note, the date of the maturity, and the amount of the note, and the nature of the security?

To which the defendants object for the reason that the record, when made up, will not disclose what that is; and for the further reason that it is immaterial.

Overruled.

(The paper referred to above is marked Exhibit 6.)

Mr. Geddes: Now, I want to offer in evidence the minutes of the meeting of the board of directors of the Butler County State Bank, of date, June 30, 1921, consisting of six pages, and will ask that they be designated Nos. A, B, C, D, E and F, inclusive. (F is a loose sheet, typewritten.)

Q. Now, Mr. Ewing, referring to Exhibit 6, I will ask you to state if the notes to which I have directed your attention, and the words and figures that I read to you, indicate the name of the makers, the date of the note, the maturity of

the note, the amount of the note, and the nature of the security, as shown by the exhibit to which I have directed your attention, being Exhibit 6?

A. Yes, sir.

Q. This first column indicates the maker?

A. Yes, sir.

Q. And this, the date of the note was made; this the date it is due; this, the amount of the note; and this the form of security?

A. Yes, sir.

[fol. 143] Q. Now, Mr. Ewing, I notice here, E. J. Andrews, 9-26-22, note due 1-26-23, $18,783.72, security D. Ranch, Hodgman County. What is the fact, if you know, whether or not that is the same E. J. Andrews indebtedness, or some of the same indebtedness to which I directed your attention a short time ago, that was discussed in the directors' meeting of the Butler County State Bank, held in June, 1921?

A. What is the date of this?

Q. 4-20-22 is the date of the note.

To which the defendants object as not being the best evidence.

Overruled.

A. I don't think there is any question but what it is the same note.

Q. Now, you know, do you not, that the Andrews' indebtedness, from June, 1921, to June, 1923, never had been paid at any period of that time?

A. I think there were some payments.

Q. When?

A. I think there were some payments during that time, but not in full.

Q. The portion of the indebtedness that was not paid, was renewed.

A. Yes, sir.

Q. Then, I notice E. J. Andrews, 9-26-22, due 2-1-23; $18,012.72, chattel mortgage. I will ask you, Mr. Ewing, if it is not a fact that that is some of the same indebtedness to which you attention was called, that was talked over by the directors of the Butler County State Bank, at the meeting held in June, 1921?

Same objections as above.
Overruled.

A. I don't remember, but I presume it is the same.

[fol. 144] The defendants move the court to strike out the answer for the reason that it is not the best evidence.
Overruled.

Q. Now, Mr. Ewing, I notice here the name of Noah Artz & Son, 11-29-22, and under the word due, 5-29-23, amount $36,425.00, under the word security, chattel mortgage and real estate mortgage. I will ask you if that is some of the same indebtedness to which your attention was directed.

A. Yes, sir.

Q. And that was discussed at the June, 1921, meeting of the board of directors of the Butler County State Bank?

A. I think so.

Q. I notice here the name, I. L. Beye, date 7-9-22, due 1-9-23; amount $11,0;3.27; security, Thomas estate and F E D?

A. Yes, sir.

Q. Also L. L. Beye, 10-17-22, due 1-17-23; $15,250, security, personal. Now, I will ask you if those two notes represent some of the same indebtedness, to which your attention has been directed, Mr. Ewing?

A. Yes, sir, I think so.

Q. And that is some of the same indebtedness that was talked over at this June, 1921, meeting of the board of directors of the Butler County State Bank?

A. I presume so.

Q. And where it says, security, personal, what does that mean?

A. I do not know whether he put in anything in the way of personal effects for security, or not?

Q. Now, as a matter of fact, Mr. Ewing, don't you know, from your experience as a banker, and from your knowledge of the transactions of the Butler County State Bank, [fol. 145] that where it says there, security, personal, that means that he gave a personal note?

A. I presume so, yes, sir.

Q. I notice L. L. Beye, 1-25, due 4-11-23; $14,750, security, personal; and also under date of 1-23-23, demand, $378.84 for both of which I note the words, security, personal. Now,

I will ask you if that is some of the same indebtedness to which your attention has been directed, and which was discussed by the directors of the Butler County State Bank, at the June, 1921, meeting?

A. I am not sure whether that is some of the same indebtedness, or whether there was some more added to it.

Q. It is some of the L. L. Beye indebtedness?

A. Yes, sir, it is some of the L. L. Beye indebtedness, but I don't know whether it is the same paper, or not.

Q. And then, I notice here, El Dorado Hotel and Theater Company, under date of 11-1-20, and under the word due 1-1-21, $30,000.00, security, first mortgage bonds; and I will ask you if that is some of the same indebtedness to which your attention was directed?

A. I think so.

Q. And that was talked over at this June, 1921, meeting of the board of directors?

A. I presume so.

Q. As a matter of fact, Mr. Ewing, the note of the El Dorado Hotel and Theater Company had been due for two years at that time, had it not?

A. It was past due. I don't remember the date.

Q. If it was dated 11-20 and due 1-1-21, it would have been practically two years past due, or more, at the time this statement was made up, in March, 1923?

[fol. 146] A. Yes, sir.

Q. Now, I notice here an item, The Fidelity National Refining Company, dated 10-23-19, $57,240, security, first mortgage bond. Is that some of the same indebtedness of the same Fidelity Refining Company?

A. I presume so.

Q. And it is some of the same indebtedness to which your attention was directed, as having been discussed at the June, 1921, meeting of the board of directors.

A. I presume it is.

Q. And then, I notice, on this statement of March, 1923, this item, Red Ball Refining Company, dated 8-1-21, and due 11-1-21, amount $25,689.00. Now, that item would have been two years past due, would it not, practically, at the time this statement was made up?

A. Yes, sir.

Q. Now, I notice, under the heading of security, it says, Fidelity Refining Company. I will ask you if that is the same Fidelity Refining Company that had the note in your bank to which your attention has been directed?

A. The same thing, yes, sir.

Q. Now, I notice this item, Red Ball Refining Company, amount, $25,690, security, the Fidelity Refining Company. Now, Mr. Ewing, that item of $25,690 was nearly two years past due at the time this statement was made up, in March, 1923, was it not?

A. Yes, sir.

Q. Is that Fidelity Refining Company the same Fidelity Refining Company whose note for $57,240.00 was held by the Butler County State Bank?

A. Yes, sir.

Q. Now, I notice this item, The Red Ball Refining Company, dated 8-1-20, and under the word due, 1-1-21; and I [fol. 147] will ask you if that note was not more than two years past due at the time this statement was made up in March, 1923?

A. Yes, sir.

Q. And I notice under the word, security, the Fidelity Refining Company. Is that Fidelity Refining Company which is listed here as security for this note, the same Fidelity Refining Company which was the maker of the note for $57,240, held by the Butler County State Bank?

A. Yes, sir.

Q. Now, I call your attention, Mr. Ewing, to this item, The Meredith Construction Company, dated 6-22-20, due 12-22-20, amount, $90,833.08. Is that the same C. W. Meredith Contracting Company, to whose notes your attention was directed, and whose notes were discussed by the directors of the Butler County State Bank, at the meeting held in June, 1921?

A. It might have been some of the same notes.

Q. But it is the same identical company?

A. It is the same company, yes, sir, but I do not know whether it is the same paper, or not.

Q. But the maker of this note of $90,833.08, being the Meredith Construction Company, is the same identical person as the Meredith Construction Company, to whose notes your attention was directed a few minutes ago, and whose

paper was discussed by the directors of the Butler County State Bank, at their meeting held in June, 1921?

A. The same borrower, yes, sir.

Q. Now, I notice here, under the head of security, the words, "Mortgage on all equipment." Do you know what that equipment was, what it consisted of?

A. It consisted of all their machinery, their tractors and trucks and automobiles and ditching machinery, and their [fol. 148] tools of all kinds, and especially where they repaired and made over their tools.

Q. Then, I notice here, Meredith Construction Company, under the head of date, 7-21-20, due 10-21-20, amount $10,000.00. And under the head of security, "Mortgage on all equipment." Now, is that the same Meredith Construction Company that was the maker of the notes to which your attention was directed a while ago, and which notes were discussed by the directors of the Butler County State Bank, at the meeting held in June, 1921?

A. Yes, sir.

Q. I notice that these two notes, the one for $90,833.08, dated 6-22-20, and due 10-21-20, aggregate over one hundred thousand dollars. Now, Mr. Ewing, do you know whether or not any effort had been made, from the time these notes were due, one December 22d, 1920, and the other October 21st, 1920; do you know whether or not any effort had been made, from the time they became due, until the time this statement was rendered to the state bank commissioner in March, 1923, to collect these notes, by the Butler County State Bank?

A. There was always effort made.

Q. If anything had been collected on those two notes during this time, the amount collected would have been deducted from this amount?

A. It would have shown the amount of the notes, with the deduction.

Q. Don't you know, as a matter of fact, Mr. Ewing, that there never was a dollar collected on either one of these notes, from the time it became due, until the time that this statement was rendered to the state bank commissioner, in March, 1923?

[fol. 149] A. I don't know.

Q. Is there any record in the Butler County State Bank that would show that fact?

A. Yes, sir.

Q. What is it?

A. The liability record, the note record, and the cash book.

Q. Now, I notice here this item, C. W. Meredith Construction Company, date 11-20-20, due on demand, amount $25,000.00, and under security, are these words, "Mortgage on all equipment." Now, I will ask you, Mr. Ewing, if it is not a fact that that note was due and payable at any date after the 20th day of November, 1920, upon your demand of payment?

A. Yes, sir.

Q. And so, if that note was made for $25,000.00, on the 20th day of November, 1920; and on the 17th day of March, 1923, the board of directors of the Butler County State Bank sent to the state bank commissioner a financial statement which shows that on that date that note amounted to $25,000.00 there would not have been anything collected on that note, from the time it was due until the date of that statement, would there?

A. I don't catch your meaning.

Q. This note bears date 11-20-20. Now, that would be the 20th of November, 1920?

A. Yes, sir.

Q. Now, it says, due on demand. I understood that any time you would demand payment of that note, it would become due?

A. Yes, sir.

Q. It shows here to be of the amount of $25,000.00.

A. Yes, sir.

[fol. 150] Q. And the security on it is a mortgage on all the equipment of the Meredith Construction Company?

A. Yes, sir.

Q. Now, Mr. Ewing, I am asking you if it is not a fact that if that note was of the amount of $25,000.00 at the time it was made, and was still of the amount of $25,000.00 at the time this statement was sent to the bank commissioner, then nothing has been collected on that note?

A. No, sir.

Q. And that is true of each and every one of the note- in this statement, to which I have directed your attention,

that shows, on the 17th day of March, when this statement was rendered to the bank commissioner, the same amount as the amount of the note when it was made?

A. Yes, sir.

Q. Now, I notice here this item, C. W. Meredith Construction Company, dated 1-19-23, and due 4-19-23, amount $7,600.00, and under the heading of security, I find, Mortgage on all equipment. Now, each of the notes that I have called your attention to, that is, of the notes of the C. W. Meredith Construction Company, the one for $90,833.08, and the one for $10,000.00, and the one for $25,000.00, show that they are secured by a mortgage on all the equipment of the Meredith Construction Company.

A. Yes, sir.

Q. These other two notes had for security a mortgage on all the equipment, that is, the note for $10,000 and the note for $25,000.00. Now, is that the same equipment that is offered as security for the payment of the $90,833.08 note, if you know?

A. We had a mortgage on all the equipment they had. In fact, some of these notes were made for the purchase of [fol. 151] this equipment, and a mortgage taken back on it.

Q. Now, then, Mr. Ewing, I notice on this statement of March 17th, 1923, made to the state bank commissioner, this item, C. W. Meredith Construction Company, overdraft $23,959.26. What is meant by that?

A. It is an overdraft.

Q. What is an overdraft?

A. Don't you know?

Q. I want you to tell the jury.

A. Well, it is money that was paid out to a person, when they had no balance.

Q. At that time, according to this statement, then, you mean to say that the C. W. Meredith Construction Company had overchecked its checking account to the amount of $23,-959.26, is that right?

A. If that is the amount, yes, sir.

Q. Well, you know from your experience as a banker, that this financial statement was made out from the records of the Butler County State Bank?

A. Yes, sir.

Q. Then I call your attention to this item here, Ed H. Meredith, dated 5-22-22, and due 11-22-22, and the amount is $19,860.00. And under the heading of security, I find these words "152 shares Emerald Oil Company." Is that a part of the same indebtedness, and is that the same Ed H. Meredith, to which I directed your attention a while ago?

A. It is the same borrower.

Q. And are those the same Ed H. Meredith notes to which I directed your attention, as having been discussed by the directors of the Butler County State Bank at the June, 1921, meeting?

A. I don't remember that Ed H. Meredith had any other paper in there at that time.

[fol. 152] Q. Then, I notice here this item, C. W. Meredith, dated 11-30-17, due on demand, amount $3,700.00, security, real estate mortgage. What is the fact Mr. Ewing, if you know, as to that being the same C. W. Meredith as the C. W. Meredith who is named in the C. W. Meredith Construction Company?

A. It is the same C. W. Meredith.

Q. The same fellow?

A. Yes, sir.

Q. Is it not a fact that this item is a note secured by a mortgage on his home over here in El Dorado?

A. Yes, sir.

Q. Now, I call your attention to this item, A. G. Williams, dated 6-21-21, due 8-22-21 amount, $94,500, and under the heading of security, the words, Mortgage on equipment. Is that the same A. G. Williams to whose notes I directed your attention a while ago?

A. The same man.

Q. And whose notes were discussed at the June, 1921, meeting of the board of directors of the Butler County State Bank?

A. Yes, sir.

Q. So far as you know, that indebtedness is a part, or all of the indebtedness that A. G. Williams owed the Butler County State Bank in June, 1921?

A. I do not know whether this is all or not, probably it was.

Q. Then, where it says, Mortgage on all equipment, what is the fact, Mr. Ewing, as to what equipment that meant?

A. That was the Meredith equipment.

Q. The same identical equipment that was offered as security by the C. W. Meredith Construction Company for the note of $90,833.08, and the note of $10,000.00, and the note [fol. 153] of $25,000.00, and the note of $7,600.00?

A. Yes, sir.

Q. Now, Mr. Ewing, I notice here, in the column under the heading, due, with reference to the $94,500 note of A. G. Williams, it says, 8-22-21. I understood you to say that that column indicated the date when the note was due?

A. Yes, sir.

Q. So that that note of A. G. Williams for $94,500.00 on the 17th day of March, 1923, when this financial statement was sent to the bank commissioner, had been due since August 22, 1921, is that correct?

A. Yes, sir.

Q. Do you know whether or not, during the period of time, from the 22nd day of August, 1921, until the 17th day of March, 1923, any effort had been made to collect this indebtedness of A. G. Williams?

A. Yes, sir, effort had been made.

Q. Is it not a fact, Mr. Ewing, that you had not been able to collect anything on that indebtedness?

A. I do not know anything about that particular note. There were collections made all the time. Perhaps the payments were applied on some other note.

Q. If, on the 22nd day of August, 1921, A. G. Williams owed the Butler County State Bank the sum of $94,500.00, and this financial statement, which was made on the 17th day of March, 1923, and sent to the bank commissioner, shows that he still owed the Butler County State Bank the sum of $94,500, there could not have been anything collected and paid on that note, could there?

Mr. Malloy: The defendants object to that question as being argumentative, and invading the province of the jury.

[fol. 154] The Court:

Q. If you remember whether, during that time, he did pay any of this indebtedness, you may answer the question.

A. No, sir, I couldn't remember.

The Court: Objection sustained.

By Mr. Geddes:

Q. Mr. Ewing, I notice here the name, A. G. Williams in an item dated 12-31-21, amount $12,000.00, due on demand, and following that, under the heading of security, Mortgage on all equipment. Is that the same A. G. Williams to whom your attention was directed a few minutes ago?

A. Yes, sir.

Q. And where it says there, Mortgage on all equipment, is that the same equipment that was offered as security for these four Meredith Construction Company notes and this $94,500.00 note of A. G. Williams.

A. Yes, sir. Maybe there was some new equipment.

Q. It is the same equipment that is referred to here in the column headed security, with reference to certain notes of the C. W. Meredith Contracting Company.

A. Yes, sir.

Q. Now, I notice here, Mr. Ewing, a line drawn under the last words, A. G. Williams, 12-31-21, demand, $12,000.00, and some figures in ink there. I wish you would examine that statement, Mr. Ewing, and tell me what those items consist of, the figures in ink.

A. It looks as though some one had just made a statement in round numbers that the Meredith and Williams' notes together were in that amount, but it does not figure just that amount.

Q. Now, I notice here the item, The Mid-Co-Packer Company, dated 3-1-23, due 9-1-23, amount $52,155.60, unse-
[fol. 155] cured. Is that the same Mid-Co-Packer Company, to which your attention was directed as the maker of some of the notes that were discussed by the directors of the Butler County State Bank, at the meeting of June, 1921?

A. The same company, yes, sir.

Q. There was no security for that loan?

A. I don't believe there was, but I am not sure about that now.

Q. Do you know whether or not the Mid-Co-Packer Company is now dissolved?

A. I don't know just what shape they are in.

Q. Do you know anything about where they are?

A. No, sir.

Q. Do you know whether or not there is such a thing in existence any more?

To which the defendants object as being incompetent, irrelevant and immaterial.

Sustained.

Q. Now, Mr. Ewing, I notice here the name of J. T. Morgan, an item date- 4-20-22, due 10-13-22, amount $26,233.00, unsecured; and I will ask you——

A. I don't believe the name is right.

Q. Are you acquainted with J. T. Morgan?

A. I have seen him. I am not acquainted with him.

Q. Where does he live?

A. He did live down in the Latham country, some place.

Q. Now, I notice here the item, M. Sokolow, dated 3-15-21, due 5-2-21, amount $16,470.41, and under the head of security. Mortgage on all stock and supplies?

A. Yes, sir.

Q. Now, on March 17th, 1923, that indebtedness was over a year and three months past due?

[fol. 156] A. Yes, sir.

Q. Then I notice this item, M. Sokolow, dated 10-11-21, due on demand, amount $1,738.91, security, mortgage.

A. Yes, sir.

Q. Then this item, M. Sokolow, dated 5-27-22, due 8-27-22, amount $3,484.85?

A. Yes, sir.

Q. Now, that $3,000.00 would have been somewhere in the neighborhood of six or seven months past due, at the time this financial statement was sent to the bank commissioner, in March, 1923?

A. Yes, sir.

Q. Now, Mr. Ewing, directing your attention again to the minutes of the meeting of the board of directors of the Butler County State Bank, of June 20, 1921, will you find for me if the minutes disclose whether or not the overdrafts are shown in the minutes of that meeting, that is, the overdrafts of the Butler County State Bank of El Dorado, Kansas, June 20, 1921?

A. Yes, sir, here they are.

Q. I direct your attention now, Mr. Ewing, to the column headed, date when overdraft commenced, on the page

marked Exhibit B, of the minutes of the meeting of the board of directors of the Butler County State Bank, of June 20, 1921, and ask you what that means?

A. That is the date that the account became overdrawn.

Q. And are the figures and the words in that column, on down the page, the dates when the particular overdrafts started?

A. Yes, sir.

[fol. 157] Q. Then, under the word, Name, in that column, what does the writing in that column mean?

A. That is the names of the persons whose accounts were overdrawn.

Q. Then, under the word, Amount, what do the figures in that column signify?

A. That signifies the amount that the account was overdrawn.

Q. Now, I notice on the page marked Exhibit B of the minutes of the meeting of the board of directors of the Butler County State Bank, held in June, 1921, under date of January 17, 1921, E. J. Andrews, amount $161.32?

A. Yes, sir.

Q. You were acquainted with E. J. Andrews?

A. Yes, sir.

Q. You knew him for years?

A. Yes, sir.

Q. And that is the same E. J. Andrews who is the maker of the E. J. Andrews notes, to which your attention was directed, is it not?

A. Yes, sir.

Q. Then, I notice, under the date of May 28, 1921, L. L. Beye, personal account, amount $90.74. I will ask you if that is the name L. L. Beye who is the maker of the L. L. Beye notes, to which your attention has been directed?

A. Yes, sir.

Q. Then, I notice, under the date of June 17, 1921, the name of N. F. Frazier, Jr., trustee, amount $329.55.

A. Yes, sir.

Q. I will ask you if that is the N. F. Frazier who is president of the Citizens State Bank?

A. Yes, sir.

[fol. 158] Cross-examination:

This Frazier trustee matter was a trustee account. Prior to the death of Mr. Adams, C. L. King, personally, had charge of the making of the loans. Well, up to that time Mr. Adams, of course, made them, a great many of them, up until his death. These large loans which have been referred to by counsel, and are shown on the statement in connection with the meeting of June 30, 1921, practically all were made by Mr. Adams. Practically everything on that list of excess loans were made by Mr. Adams.

This $90,000.00 loan to the Meredith Construction Company, for which we took a mortgage, a large percentage of that loan was for the purpose of purchasing equipment. The loan was made to the Meredith Construction Company. The Meredith Contracting Company, after the death of Mr. Adams, continued to operate. They took contracts for ditching, for laying pipe lines for street paving and road paving and contract and brick work.

Q. Your attention has been directed by counsel, Mr. Ewing, on direct examination, to these lines of credit to the Meredith Construction Company, existing on June 30, 1921; and then he has referred to the showing made to the State Banking Department in a statement of date, March 17, 1923; and it has been asked of you, the question whether these lines of credit shown on the financial statement made to the department on March 17, 1923, were continuations of the lines of credit to the Meredith Construction Company, to which your attention was directed, as having been discussed by the board of directors of your bank at the meeting held on June 30, 1921?

A. Yes, sir.

[fol. 159] Q. I now ask you, Mr. Ewing, if, during the time between these two dates, upon your examination of the condition of the bank, you entertained an opinion that those lines of credit extended to the Meredith Construction Company would pay out?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, and not proper cross examination.

Sustained.

Q. From time to time, subsequent to the death of Mr. Adams, and prior to the closing of the bank, were there sums of money collected from the Meredith Construction Company by the bank?

A. After his death?

Q. Yes.

A. Yes, sir.

Q. And applied to the payment of certain notes given to the bank by the Meredith Construction Company?

A. Yes, sir.

Not all of the Meredith Construction Company notes that were in existence in June, 1921, were still in existence and unpaid in March, 1923. The overdraft of $30,000.00 of the Meredith Construction Company, shown on the financial statement of March 17, 1923, I presume was occasioned by the bank taking care of the pay roll on a contract for work for the Santa Fe, with the idea of working it out and taking the proceeds. I think the bank held the assignment of the contract (Tr. 24-51).

N. R. Oberwortmann, called as a witness on behalf of the plaintiff, testified as follows:

I am the chief examiner of the State Banking Department, I have seen the paper marked Exhibit 6, before. I [fol. 160] brought it to El Dorado with me. It is one of the records in the office of the bank commissioner of the State of Kansas.

Mr. Geddes: I want to offer in evidence, on behalf of the plaintiff, Exhibit 6, with leave to have Mr. Oberwortmann make a copy, and have it certified, and substitute the copy for the original.

(No objection.)

Mr. Woodward: The defendant, Geo. W. Lyon, objects to Exhibit 6 because it reflects the condition of the bank subsequent to the resignation of the defendant, Lyon.

Sustained, as to the defendant, Lyon.

Exhibit 6 read to the jury by Mr. Geddes, as follows:

Witness excused (Tr. 51).

N. R. Oberwortmann, recalled by the plaintiff, testifies in substance, as follows:

I have in my possession the correspondence file of the office of the Bank Commissioner of the State of Kansas, with the Butler County State Bank of El Dorado, Kansas, for the years 1922, 1921 and 1920. The paper consisting of three sheets marked Exhibit 7, is a letter from the correspondence file of the State Bank Commissioner with the Butler County State Bank, of El Dorado, Kansas.

Mr. Malloy: The signature of C. L. King, to Exhibit 7, is admitted.

The paper marked Exhibit 8 is one of the papers found in the correspondence file.

Mr. Mallory: The signature of C. L. King to Exhibit 8 is admitted.

Mr. Geddes: I now offer in evidence, on behalf of the plaintiff Exhibits 7 and 8.

[fol. 161] Mr. Brewster: The defendant C. L. Harris, as executor, objects to Exhibits 7 and 8 as being incompetent, irrelevant and immaterial, and not binding on the defendant, C. L. Harris.

Sustained.

Mr. Geddes: I am offering these exhibits as to the defendant King, only.

Exhibits 7 and 8 read to the jury by Mr. Geddes, as follows:

Q. Mr. Oberwortmann, I now hand you a paper which has been marked Exhibit 9; and I will ask you to state if that is one of the papers that you find in the correspondence file of the office of the Bank Commissioner of the State of Kansas, with the Butler County State Bank; of El Dorado, Kansas?

Mr. Malloy: The signature of C. L. King to Exhibit 9 is admitted.

Mr. Geddes: I now offer in evidence, on behalf of the plaintiff, Exhibit No. 9, as against the defendant, C. L. King.

Exhibit No. 9 read to the jury by Mr. Geddes, as follows:

(It now being the hour of 6:00 P. M., the further hearing of this case is adjourned to 9:00 A. M., Wednesday morning, March 17, 1926.)

(Transcript, 52-54.)

Morning Session

Wednesday, March 17, 1926—9:00 A. M.

Mr. Geddes: I want again to offer in evidence the minutes of the stockholders meeting of January 5, 1923, the same being the minutes identified by the witness, H. F. Ferry, and again read it to the jury, because this goes to the question as to whether or not this record shows that Mr. [fol. 162] Kramer was elected a director of the Butler County State Bank.

Mr. Geddes (reading): January 5th, 1923. Stockholders meeting called to order by L. D. Hadley, temporary chairman. On motion of C. L. King, the old directors, with the exception of Geo. W. Lyon, were reelected.

The following are the names of the new directors: C. L. King, A. B. Ewing, T. A. Kramer, L. D. Hadley, H. F. Ferry.

Stockholders meeting adjourned.

(Signed) H. F. Ferry, Secretary.

Mr. Geddes: The plaintiff now offers in evidence certified copies of the reports of the proceedings of the quarterly meetings of the Board of Directors of the Butler County State Bank of El Dorado, Kansas, of the dates of, December 31, 1919, March 31, 1920, July 1, 1920, October 9, 1920, January —, 1921, March 31, 1921, June 30, 1921, October 8, 1921, March 31, 1922, June 30, 1922, September 30, 1922, December 30, 1923.

Mr. Geddes: This last report I have offered shows on the back that the meeting was held on the 5th day of January, 1923, and on the front page appears the date, December 30, 1923.

I offer all of these reports in evidence.

[fol. 163] Mr. Woodward: The defendant, Geo. W. Lyon, objects to the introduction of any evidence as to the transactions had by the directors of the Butler County State Bank, subsequent to January 5th, 1923; and further objects to the introduction of any testimony against the defendent, Geo. W. Lyon, in this case, for the reason that the deposits claimed to have been made by the plaintiff in this action, were made subsequent to January 5th, 1923.

The Court: The objection as to any of the reports made after the date, January 5th, 1923, so far as the defendant Lyon is concerned, is sustained.

Mr. Brewster: The defendant C. L. Harris, as executor, objects to the introduction of all of these reports, for the reason that the originals are here, and these exhibits are not the best evidence.

Sustained.

Mr. N. R. Oberwortmann, recalled by plaintiff:

Direct examination by Mr. Geddes:

Q. Mr. Oberwortmann, have you in your possession the report of the proceedings of the quarterly meeting of the Board of Directors of the Butler County State Bank, for the month of January, 1919?

A. I have.

Q. Will you produce it, please?

A. That is it.

Q. Have you in your possession the report of the proceedings of the quarterly meeting of the board of directors of the Butler County State Bank, held the first day of April, 1920?

A. I have.

Q. Will you produce it, please?

A. That is it.

[fol. 164] Q. Now, have you in your possession the report of the proceedings of the quarterly meeting of the board of directors of the Butler County State Bank, held the first day of July, 1920?

A. I have.

Q. Will you produce it, please?

A. Yes, sir.

Q. Now, have you in your possession the report of the proceedings of the quarterly meeting of the board of directors of the Butler County State Bank, held the 9th of October, 1920?

A. I have.

Q. Will you produce it, please?

A. There it is.

Q. Now, have you in your possession the report of the proceedings of the quarterly meeting of the board of

directors of the Butler County State Bank, held on the 14th day of October, 1921?

A. I have.

Q. Will you produce it, please?

A. That is it.

Q. Now, have you in your possession the report of the proceedings of the quarterly meeting of the board of directors of the Butler County State Bank, held January 10, 1921?

A. I have.

Q. Will you produce it, please?

A. Yes, sir.

Q. Now, have you in your possession the report of the proceedings of the quarterly meeting of the board of directors of the Butler Courty State Bank, held in the month of June, 1921?

A. I have.

Q. Will you produce it, please?

A. That is it.

[fol. 165] Q. Now, have you in your possession the report of the proceedings of the quarterly meeting of the board of directors of the Butler County State Bank, held on the 31st day of March, 1921?

A. I have.

Q. Will you produce it, please?

A. Yes, sir.

Q. Now, have you in your possession the report of the proceedings of the quarterly meeting of the board of directors of the Butler County State Bank, held April 7, 1922?

A. I have.

Q. Will you produce it, please?

A. There it is.

Q. Now, have you in your possession the report of the proceedings of the meeting of the board of directors of the Butler County State Bank, held July 6, 1922?

A. I have.

Q. Will you produce it, please?

A. Yes, sir.

Q. Now, have you in your possession the report of the proceedings of the quarterly meeting of the board of directors of the Butler County State Bank, held on the 13th day of October, 1922?

A. I have.

Q. Will you produce it, please?

A. That it is.

Q. Now, have you in your possession the report of the proceedings of the quarterly meeting of the board of directors of the Butler County State Bank, held on the 5th day of January, 1922?

A. I have.

Q. Will you produce it, please?

A. That is it.

[fol. 166] Q. Now, Mr. Oberwortmann, have you in your possession the report of the proceedings of the quarterly meeting of the board of directors of the Butler County State Bank, held on the 5th day of January, 1923?

A. I think that document was the first one introduced.

Q. Is that the report I have just called for?

A. Yes, sir.

Q. Will you produce it, please?

A. Yes, sir.

Q. Mr. Oberwortmann, are each and every one of these reports to which I have directed your attention, reports on file in the office of the Bank Commissioner of the State of Kansas, at Topeka?

A. They are.

Witness excused.

Mr. C. L. King called by plaintiff:

Mr. Malloy: The defendants, King, Ferry and Ewing, have no objection to the introduction of these reports, except that there is one of them that has some pencil notations on it. I think they only refer to the titles of the different lines of credit. I do not know that they are harmful in any way, but if they are harmful we do not want to be bound by them.

Mr. Geddes: I am offering these reports in evidence as against all of the defendants in this case.

Mr. McKay: I object to the introduction of these reports in evidence, as to the defendant, E. F. Adams.

Objection sustained.

Mr. Woodward: I object to the introduction of these reports in evidence, as to the defendant, Geo. F. Lyon.

[fol. 167] The Court: As to any reports made after January 5th, 1923, the objection will be sustained as against the defendant Lyons.

Mr. Geddes: The plaintiff now offers in evidence the original reports of the proceedings of the various quarterly meetings of the board of directors of the Butler County State Bank, held on January 1st, 1920; April 1st, 1920; July 1st, 1920; October 9th, 1920; January 10th, 1921; March 31st, 1921; June 30th, 1921; October 14, 1921; January 5th, 1922; April 7th, 1922; July 6th, 1922; October 13th, 1922; January 5th, 1923.

Same objection as above.

Same rulings.

Mr. Geddes: I now ask if these gentlemen will admit that the signatures attached to these various reports are the signatures of the various gentlemen who signed them?

Mr. Malloy: Yes, we admit that.

Mr. N. R. Oberwortmann recalled by plaintiff:

Direct examination by Mr. Geddes:

Q. Mr. Oberwortmann, I want you to produce the original official statement of the financial condition of the Butler County State Bank, on file in the office of the Bank Commissioner of the State of Kansas, showing the condition of that bank at the close of business on the 13th day of May, 1920?

A. All, right. That is it.

Q. And also the original statement showing the financial condition of that bank at the close of business on the 28th day of August, 1920?

A. All right.

Q. Now, I want you to produce the original statement showing the financial condition of that bank at the close of [fol. 168] business on the 18th day of December, 1920?

A. All right.

Q. Now, will you produce the original statement showing the financial condition of that bank at the close of business on the 5th day of March, 1921?

A. All right.

Q. I now ask you to produce the original statement showing the financial condition of the Butler County State Bank, at the close of business, June 30th, 1921?

A. Yes, sir.

Q. Now, will you produce the original statement showing the financial condition of that bank on the 16th day of September, 1921?

A. Yes, sir.

Q. I now ask you to produce the original statement showing the financial condition of that bank on the 31st day of December, 1921?

A. All right.

Q. And now, the original statement showing the financial condition of that bank on the 18th day of March, 1922.

A. All right.

Q. And the statement showing the financial condition on the 6th day of June, 1922?

A. All right.

Q. Now, Mr. Oberwortmann, will you produce the original statement showing the financial condition of the Butler County State Bank, at the close of business on the 31st day of August, 1922?

A. All right.

Q. I now ask you to produce the original statement showing the financial condition of that bank at the close of business December 11th, 1922?

[fol. 169] A. All right.

Q. And will you not produce the original statement showing the financial condition of that bank at the close of business on the 17th day of March, 1923?

A. Yes, sir.

Mr. Geddes: The plaintiff now offers in evidence each and every one of the original statements showing the financial condition of the Butler County State Bank of El Dorado, Kansas, as produced and identified by the witness, N. R. Oberwortmann, dated as follows: May 13, 1920; August 28, 1920; December 18, 1920; March 5, 1921; June 30, 1921; September 16, 1921; December 31, 1921; March 18, 1922; June 6, 1922; August 31, 1922; December 11, 1922; and March 17, 1923.

Mr. Malloy: So far as I know, we have no objection, but I want to reserve the opportunity to make an objection.

Mr. McKay: I desire to object on behalf of the defendant, Mrs. E. F. Adams.

Objection sustained.

Mr. Woodward: I desire to object on behalf of the defendant, Geo. W. Lyon.

The Court: As to any reports made after January 5th, 1923, the objection of the defendant, Geo. W. Lyon, will be sustained.

Mr. Geddes: I do not desire to read these reports in detail to the jury at this time, but there may be some question as to whether or not they are in evidence, unless the reading itself is waived.

The Court: It will not be necessary to read them at this time.

(The reading of the reports to the jury at this time is waived by the defendants.)

Witness excused.

(Transcript 55-60.)

[fol. 170] The original financial statement of the Butler County State Bank at El Dorado, Kansas, is the financial statement rendered to the State Bank Commissioner by the officers and directors of the bank and is signed by A. B. Ewing; J. B. Adams; H. F. Ferry and C. L. King and under the head of excess loans is shown the E. J. Andrews, Noah Artz & Son, L. L. Beye, Fidelity Refining Company, C. W. Meredith Const. Co. and A. G. Williams notes.

The same statement dated August 28th, 1920, is signed by A. B. Ewing, J. B. Adams, H. F. Ferry, T. A. Kramer, and under the head of excess loans shows the E. J. Andrews, L. L. Beye, Fidelity Refining Company, C. W. Meredith Contr. Co. and A. G. Williams paper.

Such financial statement dated December 18th, 1920, is signed by A. B. Ewing, J. B. Adams, C. L. King, and H. F. Ferry and under the head of excess loan shows the notes above named and also the note of Ed H. Meredith.

The financial statement, of such bank, dated March 5th, 1921, is signed by A. B. Ewing, C. L. King, and T. A. Kramer, directors, and under the head of excess loan shows all of the loans above mentioned and among others certain loans to the Mid Co Packer Company, and the overdraft of Fidelity Refining Company and Meredith Con. Co.

The financial statement of such bank, dated June 30th, 1921, is signed by C. L. King, H. F. Ferry, T. A. Kramer, and L. D. Hadley, directors, and A. B. Ewing, cashier, and under the head of excess loan it shows the loans of the parties above named together with others.

Such financial statement dated December 31st, 1921 is signed by C. L. King, president, and T. A. Kramer, L. D. [fol. 171] Hadley, A. B. Ewing, G. W. Lyon and H. F. Ferry, directors, and under the head of excess loan, together with others, shows the loan to be various parties hereinbefore named and also Woodson Oil Company.

The financial statement dated March 18th, 1922, is signed by H. F. Ferry, C. L. King, L. D. Hadley, A. B. Ewing and T. A. Kramer, directors and under the head of excess loans, shows the various loans named above and other excess loans.

The financial statement dated June 6th, 1922, is signed by H. F. Ferry, C. L. King, L. D. Hadley, A. B. Ewing and T. A. Kramer, directors, and under the head of excess loans show- all of the loans named above and other excess loans, and the overdraft of Meredith Contracting Company.

Such financial statement dated August 31st, 1922, is signed by C. L. King, L. D. Hadley, A. B. Ewing, H. F. Ferry and G. W. Lyon, directors, and under the head of excess loan shows all of the excess loans above named together with other excess loans.

Such financial statement dated December 11th, 1922, is signed by H. F. Ferry, L. D. Hadley, C. L. King, A. B. Ewing and G. W. Lyon, directors, and under the head of excess loans shows the loans above named together with other excess loans.

Such financial statement dated March 17th, 1923, is signed by H. F. Ferry, C. L. King, A. B. Ewing, and L. D. Hadley, directors, and under the head of excess loans shows all of the loans above named together with other excess loans.

Each of these financial statements bears the filing stamp of the bank commissioner at Topeka, Kansas. (Transcript, 59-60.)

[fol. 172] The report of the proceedings of quarterly meetings of the directors of the Butler County State Bank made to the bank commissioner and held on January 1st, 1920, is signed by J. B. Adams, C. L. King, and A. B. Ewing,

and under the head of excess loans, it shows the E. J. Andrews, Noah Artz & Sons, Mid Co. Packer Company, Meredith Contr. Co., and A. G. Williams and other excess loans.

Such report for the meeting of April, 1920, is signed by J. B. Adams, C. L. King, H. F. Ferry, and A. B. Ewing, and under the head of excess loans shows all of the excess loans above named and the excess loan to L. L. Beye and Fidelity Refining Company.

Such report made to the bank commissioner of the meeting held on July 1st. 1920, is signed by A. B. Ewing, J. B. Adams, C. L. King, and H. F. Ferry and under the head of excess loan shows together with others the excess loans above maned.

Such report to the bank commissioner of the meeting held October 9th, 1920, is signed by J. B. Adams, H. F. Ferry, C. L. King, and A. B. Ewing, and under the head of excess loan among other shows the excess loans above named.

Such report made to the bank commissioner of the meeting held on January 10th, 1921, is signed by J. B. Adams, C. L. King, T. A. Kramer, L. D. Hadley and H. F. Ferry, directors, and under the head of excess loan together will others, shows all of the excess loans above named.

Such report of the meeting held March 31st, 1921, is signed by C. L. King, T. A. Kramer, A. B. Ewing and L. D. Hadley, directors, and under the head of excess loan among others shows all of the loans above mentioned.

[fol. 173] Such report of the June-July 1921 meeting to the state bank commissioner is signed by C. L. King, H. F. Ferry, T. A. Kramer, L. D. Hadley and A. B. Ewing, and under the head of excess loan shows the Andrews, Beye, Fidelity Refining Company, J. G. Robinson, L. M. Robinson, Mid Co. Packer Company, A. G. Williams, Ed H. Meredith, C. W. Meredith Cont. Co. El Dorado Hotel and Theatre Company and Noah Artz & Son, together with other excess loans.

Such report of the October 1921, meeting, to the bank commissioner, is signed C. L. King, T. A. Kramer, H. F. Ferry, L. D. Hadley and A. B. Ewing, directors, and under the head of excess loans, all of the excess loans last above mentioned are set out together with loans to Red Ball Refining Company, and other excess loans.

Such report to the bank commissioner of the meeting of January, 5th, 1922, is signed by H. F. Ferry, T. A. Kramer, L. D. Hadley, A. B. Ewing, G. W. Lyon, director-, and under the head of excess loan all of the excess loans above named together with other excess loans are listed one of which is $17,072.00 to the Woodson Oil Company.

Such report to the state bank commissioner of the meeting of April 7th, 1922, is signed by C. L. King, T. A. Kramer, L. D. Hadley, H. F. Ferry and A. B. Ewing, director and *other* the head of excess loans all of the loans above named together with others are listed and showing a total of excess loans of $774,975.05.

Such report to the state bank commissioner of the meeting of July 6th, 1922, is signed by C. L. King, T. A. Kramer, L. D. Hadley, and A. B. Ewing, directors, and H. F. Ferry, cashier, and under the head of excess loan shows together [fol. 174] with others *shows* all of the excess loans above mentioned, a total of excess loans of $771,528.72.

Such report of the meeting of October 13th, 1922, to the bank commis-ioner, is signed by H. F. Ferry, C. L. King, L. D. Hadley, and A. B. Ewing, directors and under the head of excess loan, shows all of the excess loans above named together with others a total of excess loans of $776,-038.42.

Such report to the state Bank Commissioner of the meeting held January 5th, 1923, is signed by C. L. King, H. F. Ferry, L. D. Hadley and A. B. Ewing, directors, and under the head of excess loan shows all of the excess loans above named together with others, a total of excess loans of $758,993.26 (Transcript 58).

C. L. KING, being called as a witness on behalf of the plaintiff, testified in substance as follows:

Direct examination:

I am one of the defendants in this case. The signature to the paper marked Exhibit 10 is mine, I either wrote it or dictated it and signed it and mailed it or had it mailed.

I received the original letter of which the paper marked Exhibit 11 is a copy.

Mr. Geddes: The plaintiff now offers in evidence Exhibit 10, being a letter signed by the defendant C. L. King.

Mr. Brewster: The defendant C. L. Harris, as executor, objects to Exhibit 10 as being incompetent, irrelevant and immaterial, and not binding on this defendant.

Sustained.

[fol. 175] Mr. Malloy: The same objection to Exhibit 10 is made on behalf of the defendants Ferry and Ewing.

Sustained.

(The same objection is made on behalf of the defendants, E. F. Adams, Geo. W. Lyons, and L. D. Hadley.)

Sustained.

Exhibit 10 read to the jury by Mr. Geddes, as follows: (See page — of this record.)

Mr. Geddes: The plaintiff now offers in evidence Exhibit 11.

(The same objections were made to Exhibit 11 as were made to Exhibit 10. Same rulings.)

Exhibit 11 read to the jury by Mr. Geddes, as follows: (See page — of this record.)

(Transcript 61-62.)

The original letter was signed by F. H. Foster. The paper which has been marked Exhibit 12 was dictated by me and I signed it and caused it to be mailed.

Mr. Geddes: The plaintiff now offers in evidence Exhibit 12.

Mr. Malloy: As to Exhibit 12, there is no objection on the part of the defendant King; but defendants Ferry and Ewing object to Exhibit 12, as not binding upon them.

Objection sustained.

Same objection on the part of all other defendants.

Sustained.

[fol. 176] Exhibit 12 read to the jury by Mr. Geddes, as follows: (See page — of this record.)

(Transcript 62.)

The paper marked Exhibit 13 is a copy of a letter I received from Mr. Foster.

Mr. Geddes: The plaintiff now offers in evidence Exhibit 13.

Same objeections made to Exhibit 13 as were made to Exhibit 12.

The Court: Exhibit 13 will be received as against the defendant C. L. King; and the objections will be sustained as to the other defendants.

By Mr. Geddes:

Q. Mr. King, I notice you say in this letter, Exhibit 12, after you have been speaking about the Sokolow loan, you say, this action was taken after a conference with Mr. Fraizer, Mr. Ferry and Mr. T. A. Kramer, is that right?

A. Yes, sir.

Q. And is the Ferry you were speaking about in that letter the H. F. Ferry, who is a defendant in this case?

A. Yes, sir.

Mr. Geddes: Now, I insist that this is competent evidence as against both Ferry and Kramer.

Q. Did you talk over all these matters with Mr. Ferry before you wrote that letter?

A. I would say, not.

Q. Did you talk over some of them?

A. Immediately before I wrote the letter, I do not think I had any conference with Mr. Ferry, or anyone else.

[fol. 177] Mr. Malloy: The only thing discussed was with reference to the Sokolow loan, in order to let him complete some wells. As to all the rest of it, I think the ruling is correct. Perhaps as to that one thing, it may be competent.

Mr. Geddes: Now, I desire to renew my offer of Exhibit 13 in evidence, which has been identified by the witness King.

Mr. Brewster: I object to Exhibit 13, as not binding upon the defendant C. L. Harris, being purely hearsay, not made under oath.

Mr. Bond: I make the same objection on behalf of the defendant L. D. Hadley.

Mr. Malloy: The same objection on behalf of the defendants Ferry and Ewing.

The Court: As to the letter marked Exhibit 12, the objection to the introduction of the letter, on the part of the defendants, other than King, will be sustained except as to the first page of said letter. The first page will be received as against all of the defendants, and the balance only as to the defendant King; that is, all of the defendants except Mrs. Adams.

Exhibit 13 read to the jury by Mr. Geddes, as follows: (See page — of this record.)

By Mr. Geddes:

Q. Mr. King, I will ask you if it is not a fact, that to the original letter, of which Exhibit 13 is a carbon copy, was signed the name of F. H. Foster, bank commissioner?
A. It was.
Q. You received that letter?
A. I did.

The Court: This letter, so far as it may be a reply to the other letter with reference to the Sokolow matter, will [fol. 178] be received as against all of the defendants, except Mrs. Adams; and the balance of the letter only as against the defendant King.

Witness excused.
(Transcript 63-64.)

C. J. Peterson was called as a witness on behalf of the plaintiff — testified in substance as follows:

Direct examination:

My name is Carl J. Peterson, I live at Topeka, Kansas, was bank commissioner of the State of Kansas during the years 1923, 1924. I know the defendants C. L. King and H. F. Ferry and have met L. D. Hadley and A. B. Ewing. I became bank commissioner on February 1st, 1923. After that date I had occasion to come to El Dorado, Kansas, on March 30th, as I recollect. I am acquainted with Harry Warren, he was one of my deputies in February, 1923, under my administration as bank commissioner. Mr. Warren had been here at El Dorado before I came. He had

submitted to me a report of an examination made by him of the Butler County State Bank. I had examined the report before I came. I had a conversation with the defendant C. L. King, but I cannot say whether it was before or after the report was submitted, my recollection, is that it was after. I had a conversation with Mr. C. L. King relative to the condition of the Butler County State Bank, at Topeka, after Mr. Warren had submitted his report. I should judge it was some time the fore part of March, 1923, as I recollect it was just after I had received the report from Mr. Warren the latter part of February. Assuming that Mr. Warren examined the Butler County State Bank [fol. 179] between the dates of February 20th and the 23rd it was just a few days afterwards. Mr. Frazier was with Mr. King at Topeka. I had a conversation with these gentlemen relating to the condition of the Butler County State Bank of El Dorado, Kansas. I exhibited to Mr. King as I recollect, everything that we had with reference to his bank, I could not say the exact papers that were submitted. I discussed in detail with Mr. King the conditions of the bank.

After I became bank commissioner and before I came to El Dorado about the 30th of March, 1923, I had some information that some effort was being made to save the Butler County State Bank from being closed. I knew there were a number of men working on it at that time. I was here at El Dorado on March 30th, 1923, I think I came in that morning from Wichita. I might have come the night before. I went to the hotel and then to the Butler County State Bank that morning, I talked with Mr. Warren and Mr. Carpenter in regard to the condition of the Butler County State Bank before I went down to the bank that morning and there may have been some other examiners here at the time. When I went down to the bank I told them to post the notice that the bank was in the hands of the bank commissioners. Such a notice was posted on the front doors and the bank was closed. I stayed here, that day. Mr. Warren I think was left in charge of the bank, Mr. Wilson was here. It was left in charge of my deputies. Mr. Crippy was later appointed receiver of the Butler County State Bank and Mr. W. F. Benson was in charge of the bank here. Mr. Benson took charge of the bank at my direction, he was

assistant to Mr. Crippy, although he was in charge of the bank.

[fol. 180] Exhibit 14 which you hand me in the financial report of the condition of the Butler County State Bank as rendered to me by Harry Warren under date of February 23rd and 24th, 1923. I think at the time Mr. King was in my office at Topeka and the condition of the Butler County State Bank was talked over that the report was shown to Mr. King. My understanding is that everything was taken up with him, that was my intention at the time and I think I did, my best judgment is that it was shown to him.

Mr. Geddes: The plaintiff now offers in evidence Exhibit 14, being a report of the condition of the Butler County State Bank, under date of February 23rd and 24th, 1923.

Mr. Woodward: I object to Exhibit 14 on behalf of the defendant Geo. W. Lyon, and further move the court to strike out all the testimony of the witness Peterson relating to Exhibit 14, and as to all matters subsequent to January 5th, 1923.

Mr. Brewster: The defendant C. L. Harris, as executor, objects to Exhibit 14, as not binding upon this defendant, it is not a record of the Butler County State Bank, and it is purely hearsay, so far as the defendant Kramer is concerned; and is incompetent, irrelevant and immaterial.

The Court: I think this confidential report could not be competent except as against those defendants whose attention was called to it. All objections will be sustained, except as to the defendant King.

Mr. Malloy: I desire to enter an objection as to Mr. King, I think the evidence will show that it was not shown to Mr. King, or called to his attention.

[fol. 181] By Mr. Peterson:

A. My best judgment is that I showed it to him, but I won't be positive.

The Court: The objection is overruled as to Mr. King.

(Transcript 61-69.)

The time Mr. King and Mr. Frazier were at my office, was three or four weeks before the 30th of March. The fore part of March, 1923, would be my best judgment.

Mr. Geddes: I now desire to read Exhibit 14 to the jury.

Mr. Brewster: I object to Exhibit 14 being read to the jury insofar as it related to Mr. Kramer.

Sustained.

(Exhibit 14 read to jury by Mr. Geddes.)

By Mr. Geddes:

Q. Mr. Peterson from the time of the appointment of Mr. Crippy, as receiver of the Butler County State Bank by you, down to the time that your term expired as bank commissioner, the Butler County State Bank since that time, was at all times in charge of the Bank Commissioners Department?

A. It was.

Q. And in the process of liquidation?

A. It was.

(See Transcript 69-70.)

Cross-examination:

I took charge of the banking department in February 1923, my attention was called to this bank by Mr. Foster. I directed Mr. Warren and others to go down and make the examination. When the report came in I presume I examined it. It was a few days after that that Mr. King [fol. 182] and Mr. Frazier were at my office. It might have been two days and it may have been ten days.

Q. During this conversation that you had with Mr. King, did you, or not, direct him to go back to El Dorado, and keep the bank open?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, not proper cross examination and no defense to this action.

The Court: The objection is overruled upon the theory that the purpose for which this evidence will be received will be covered by the instructions.

(Question read to witness.)

A. I did not.

Q. Did you make any suggestion of that kind?

A. We talked the matter over.

Q. Did you say that it would be agreeable with you that that should be done at that time?

A. Yes, sir.

Q. At that time, you believed the bank to be solvent, did you not?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, not proper cross examination, and no defense.

Overruled.

A. I was not positive as to whether it was solvent or not. I had my suspicions aroused.

Q. When you received this confidential report that has been mentioned rere, did you make an examination of any of the prior reports on the condition of this bank?

A. Yes, sir, we went over all of them.

Q. Then, after receiving this confidential report, which stated, in the opinion of Mr. Warren, that the bank was insolvent, and after examining the other reports that had [fol. 183] been made to your office concerning the condition of this bank, you say that you were not convinced, at the time you had this discussion with these two gentlemen, that this bank was actually insolvent?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, not proper cross examination, and on defense to this action.

The Court: How is that cross examination, Mr. Malloy?

Mr. Malloy: I take it that this is introduced for the purpose of showing the opinion of the bank commissioners department upon the condition of this bank.

Objection overruled.

The Court (to the jury): Gentlemen, this evidence, as suggested yesterday, will be received and considered so far as it may assist the jury in determining the knowledge that the various defendants may have had with reference to the condition of the bank at the time that the evidence relates to.

(Question read to witness.)

A. That is correct.

By Mr. Malloy:

Q. There was a condition, was there not, prevailing in the banks throughout the entire middle west, if not in the entire country,—a lot of frozen paper in the note case?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, not proper cross examination, and no defense to this action.

Overruled.

A. There was.

Q. Then, the fact that paper remained more or less inactive in the note case of this bank for an unusually long period of time, when compared with the conditions prevail- [fol. 184] ing prior to the war, did not necessarily raise in your mind a conclusion that the paper was bad, during those times of stress, did it?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, not proper cross examination, and no defense to this action.

Overruled.

A. It had not at that time. I was still investigating.

Q. You are the commissioner that issued the certificates against the bank guaranty fund, covering these matters in suit here, and the other depositors?

A. All that were presented for issuance, yes, sir.

Q. Was there not, on the part of the banking department, under your administration, Mr. Peterson, and the prior ones, a studious attempt to avoid accruals against the bank guaranty fund?

To which the plaintiff objects for the reasons stated above.

Sustained.

Q. When you were down here on the 30th day of March, 1923, Mr. Warren had preceded you down to El Dorado, had he not?

A. He had.

Q. Is it not a fact, Mr. Peterson, that the bank was closed through the request of Messrs. King and Ferry, made to Mr. Warren, on the morning of that day?

A. Well, they might have made the request to him. I don't know about that.

Q. Well, the notice was already on the door, was it not, when you arrived there, that the bank was in the hands of the department?

[fol. 185] A. I think it was posted in my presence, but I am not sure about that.

Q. Were you there early that morning?

A. Yes, sir.

Q. What time?

A. A few minutes before nine.

Q. Mr. King and Mr. Ferry and Mr. Warren were there at the bank, when you got there that morning, were they not?

A. Some of them were there, I don't know which ones.

Witness excused.

Mr. Woodward: The defendant Geo. W. Lyon moves the court to strike out all the testimony of this witness in relation to matters that occurred after the 5th day of January, 1923.

(See Transcript 70-72.)

Harry Warren, called as a witness on behalf of the plaintiff, testified in substance as follows:

Direct examination:

My name is Harry Warren, I live at Kansas City, Missouri, am acquainted with the defendants C. L. King and H. F. Ferry. I have met A. B. Ewing and Mr. Hadley. In the month of February, 1923, I held the official position in the State of Kansas, of bank examiner under the administration of Mr. Peterson. I had been connected with the banking department of the State of Kansas during the years 1914, 1915 and 1916. I remember of being in El Dorado, Kansas, along about the 20th to the 23rd of February, 1923. The purpose of my visit to El Dorado at that time was making an examination of the Butler County State Bank. I made an examination at that time. It was [fol. 186] made in the day time. Mr. King, Mr. Ferry and Mr. Hadley were about the bank while I made the examination. When we examine a bank we make a list of every-

thing in the bank, take a statement of their accounts and we go through and verify the accounts, look at the notes examine the amount of cash in the bank and the various books and records of the banks, we examine the cash book and note registry and things of that kind and the examination is reduced to writing. While I was making the examination of the Butler County State Bank in February, 1923, I talked with the defendants King, Ferry, Hadley, and Ewing, talked about the condition and the report was prepared and submitted to them and signed by part of them. We held a meeting of the board of directors to go over each loan separately to get the value of them. We took up the notes, note by note, and went over the notes, discussed each one of the notes and security, if any, we talked in a general way about each note and the security on each note.

The paper consisting of eleven sheets marked Exhibit 15 is the original report made by me to the state bank commissioner of my examination of the Butler County State Bank between the dates of February 20th and 23rd, 1923, at the close of business February 20th, 1923. It purports to reflect the condition of that bank as of the close of business February 20th, 1923. H. F. Ferry, A. B. Ewing, L. D. Hadley and C. L. King signed their names on the back of sheet eleven, on February 22nd, 1923.

(Transcript 73-75.)

Mr. Geddes: The plaintiff now offers in evidence Exhibit No. 15.

[fol. 187] Mr. Malloy: Bound in this report, Exhibit No. 15, just ahead of the page upon which the directors signed, is the copy of this confidential report, which, admittedly, was never presented to the directors.

By Mr. Geddes:

Q. Mr. Warren, I direct your attention to Exhibit 15. What is the fact with reference to this report being presented to the board of directors?

A. The directors signed No. 11, that is the only sheet they saw. Mr. Ferry signed and swore to sheets Nos. 1, 2 and 3.

Mr. Malloy:

Q. And those are the only ones he saw?
A. Yes, sir.

Mr. Geddes: I withdraw the offer for the present.

By Mr. Geddes:

Q. Now, Mr. Warren, as I understand you, sheet No. 11 was signed and sworn to by all of the directors whose names appear there?
A. Yes, sir.
Q. And then, sheets Nos. 1, 2 and 3 were signed by Mr. Ferry?
A. Yes, sir.
Q. Now, Mr. Warren, where did you get the data that appears on sheet 4, 4a, 4b, 5, 6, and on pages numbered 7, consisting of seven sheets, and on pages numbered 8, consisting of four sheets, and on sheet No. 9 and sheet No. 10, where did you get the data that you put in there?
A. From the records of the bank.
Q. The Butler County State Bank?
A. Yes, sir.

Mr. Malloy:

Q. Where did you get the data on sheet No. 10?
[fol. 188] A. From the records.
Q. That is a confidential report?
A. This is just my opinion.

The Court: Take the confidential report out.
Mr. Geddes: Very well.
The Court: Eliminate page ten from that question, Mr. Geddes, and offer only that portion which contains data which the witness obtained from the record of the bank.
Mr. Geddes: Very well. The plaintiff now offers in evidence Exhibit 15, except page 10, which is the confidential report.
Mr. Brewster: The defendant C. L. Harris, as executor, objects to Exhibit 15, as being incompetent, irrelevant and immaterial, and not binding on this defendant.
The Court: The objection is sustained as to Kramer.

Mr. Woodward: The same objection as—the defendant Lyon.

Sustained as to Lyon.

Mr. Geddes: This exhibit is competent against Kramer, if he was a director of the bank at that time.

By Mr. Geddes:

Q. Mr. Warren, I want you to enumerate to the court and jury the names of the various books and records and papers and documents, and everything from which you got the data that is set out in the exhibit which I now hand you, being Exhibit 15, and on pages 2 and 9 thereof. I want to know from what books and records of the Butler County State Bank you got the data that is contained in that report?

A. The daily statement book, the general ledger, the note case, the individual ledger, the savings ledger, real [fol. 189] estate loans certificates of deposit ledger, cash book register, and other cash, that is about all.

Mr. Geddes: I now ask the court to direct the receiver of the Butler County State Bank to have these books and records here after dinner.

The Court: This will necessitate a tremendous amount of work. I do not see why this compilation cannot be admitted in the place of these records. In this form it is probably not competent over the objections of the defendants.

Mr. Geddes: That is in evidence against all of the defendants who signed it. I am making my request now to meet the objection raised by the defendant Kramer.

The Court: Mr. Brewster, do you still insist on your objection?

Mr. Brewster: We do.

The Court:

Q. The data you have inserted in this report, Mr. Warren, is that what you secured from the books themselves?

A. Yes, sir.

Q. There are no statement- there of conclusions drawn by you, from the facts, as you found them on the books?

A. Only on sheet 10.

The Court: That has been eliminated.

Mr. Malloy: There are statements and conclusions obtained from all these notes.

Mr. Warren: Yes, sir, I have stated what I thought it was worth. I might have been mistaken.

The Court: If you offer this report only insofar as it reflects facts that he secured from the books at that time, the objections will be overruled.

Mr. Brewster: Insofar as it shows the financial condition of the bank?

[fol. 190] The Court: Yes.

Mr. Brewster: Then, we will have no objection.

Mr. Geddes: The plaintiff now offers in evidence as against the defendants, C. L. King, A. B. Ewing, H. F. Ferry, L. D. Hadley and T. A. Kramer, plaintiff's Exhibit 15, insofar and to the extent of the data and information set out in the report, taken from the books and records and papers and notes and securities of the Butler County State Bank of El Dorado, Kansas, by the witness at the time he assembled the report; but the plaintiff does not offer any of the notations on the report written by the witness at the time he assembled the report, as to statements that might have been made to him by any of the parties who signed the report, or as to any opinion or description of any of the security or instruments shown in the report.

Mr. Brewster: Insofar as it is confined to the condition of the bank, we do not object.

(See Transcript, 76-78.)

After I made my examination of the Butler County State Bank in February, 1923, I returned to Topeka, came back to El Dorado, I think about March 27, 1923, went to the Butler County State Bank and saw the defendant C. King and Ferry. I don't recall seeing Mr. Hadley, don't know whether Mr. Ewing was there or not, I never saw him. I discussed with King and Ferry the condition of the Butler County State Bank. We talked about the condition of the bank. I think I came after banking hours and left that

evening for Florence. I took off the daily statement at the close of business that day. I took that statement off of their daily statement. The data on Exhibit 16 other than the lead pencil notations at the upper left hand corner and [fol. 191] the figures in ink to the left of the red line at the lower left hand corner is data taken from the books and records of the Butler County State Bank on that occasion. Mr. King was there at that time, I talked to Mr. King.

Mr. Geddes: The plaintiff now offers in evidence Exhibit 16.

Mr. Malloy: If Mr. Warren has stated that it is a true and exact copy of the daily statement of the day it purports to be, we have no objection.

By Mr. Warren:

A. It is supposed to be.

Exhibit 16 received in evidence and read by Mr. Geddes.

(See page — of this Transcript.)

(Transcript 80.)

I think I left El Dorado that night and if the bank was closed on the 30th I came to El Dorado on the 29th. I was here at the time Mr. Peterson, the bank commissioner, arrived. I posted the notice on the door of the bank. I came back to close the bank. Between the time I was here in February and the time I was here March 26th or 27th I talked with Mr. King about the fact that some project was being worked out to reorganize the bank, I think Mr. Ferry was present, I am not sure. Mr. King asked me to close the bank on the 30th. Mr. Peterson and I went to the bank together on the morning of the 30th of March.

(Transcript 79-82.)

Cross-examination:

I believe I had a conversation with some of the officers at the hotel the night before the bank was closed, with Mr. King and Mr. Ferry, I do not say that I did not tell them that I would not close the bank, but would be at the hotel if they wanted me. We had been working with them for [fol. 192] quite a length of time on that plan. I intended

to close the bank whether they made any suggestion to me about it or not. They called me up on the 29th at Florence. Mr. Hazlett the president of the El Dorado National Bank called me. The occasion of my coming back to El Dorado was this telephone call. My confidential report is simply a statement of my opinion. The report refers to the sharp decline in deposits in the bank, there was nothing unusual about that. Mr. King told me that it was on account of an oil company, they had trouble. It is customary for bank deposits to shrink sharply just before the first of March and then go back. I criticized the overdrafts, I went through these overdrafts to ascertain what ones were made by responsible people. There is an overdraft of G. L. Ramsey there. This pencil notation on the letterhead of the Butler County State Bank I presume is the interest, there was another examiner here that took charge of part of the detail work and he wrote these overdrafts. This column refers to the amount of deposits. I made a statement on direct examination that I would discuss each note with the directors and if the note had no security, go on to the next note. We encounter a large number of notes which have no security other than the security of the maker and they are absolutely good in every bank. It is the duty of a party occupying such a position as I occupy, to go over these matters carefully and ascertain all you can about the ability of the maker to liquidate the obligation and encourage the directors and officers to give close attention to the business and to criticize them sharply in order to accomplish that result. An examination of the note case is intended to point out the paper that is worthless or slow or questionable and [fol. 193] to encourage the officials of the bank to get busy on that paper.

Q. You find, do you not, Mr. Warren, both in your experience as a banker, and in connection with the banking department of the state, that the securities of the note case of a going concern are entirely different in value, than the securities left in the note case of a bank after its doors have been closed?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, not proper cross examination, and no defense to this action.

Overruled.

A. Very much so.

Q. That is, it is very much more difficult to collect the contents of a note case after the doors of the bank have been closed?

Same objection. Overruled.

A. Yes, sir.

Q. I will ask you, Mr. Warren, if it is not a fact, that the judgment of the directors of a bank, and the judgment of the representatives of the State Banking Department, with reference to the liquid condition of the paper, that is, whether it is good or bad, is materially different, as long as the bank is a going concern, than a judgment that would be exercised by the same department, or by a receiver, after the doors of the bank have been closed?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, not proper cross examination, and not a defense to this action.

Overruled.

A. I think so.

Q. Is it not a fact, Mr. Warren, that in the inventory of the assets of a closed institution, that the receiver, or the [fol. 194] department in charge at that time, is more or less inclined to pass upon whether or not a note is good or bad, by determining whether the maker is, or is not, execution proof?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, not proper cross examination, and no defense to this action.

Overruled.

A. Yes, sir, after it is closed.

Q. Whereas, before that time, you look a great deal to the character and integrity of the maker, whether he has any property in the open, or not?

Same objection as above.

Overruled.

A. Yes, sir, and his ability.

(Transcript 82-85.)

In my examination of February, 1923, in my confidential report the paper was classified as slow, doubtful, etc., that is the way the directors classified the paper. The confidential report says everything about the bank is straight, nothing underhanded or concealed, the records were well kept. I did not go over the reports that had been made prior to this time when I examined it. I did after I went to Topeka, from that examination I found that the slow paper had been reported on every quarterly report, I did not re-examine or make any inventory of the bank after it was closed. I was here in charge of the bank one day after it closed and then Mr. Wilson came and took charge.

(Transcript 85.)

Redirect examination:

Sometimes the examiner goes out and examines the security behind the notes that are exhibited to him. When [fol. 195] I examined the Butler County State Bank in 1923 I did not go out and examine the security back of these notes. They were altogether—anybody could tell by looking at these notes—you did not need to go out and look at the security, there had been no interest paid on these on from one to two years.

Q. What conditions occurred over night that would make a note of $10,000.00, unsecured, in the Butler County State Bank, while the bank was open, easier to collect, then the same note on the next day, when the bank had been closed?

Mr. Brewster: The defendant, C. L. Harris, executor, objects to the question as being incompetent, irrelevant and immaterial, and calling for the conclusion of the witness.

Mr. Malloy: That defendants King, Ferry and Ewing are willing to have the question answered.

The Court: Bearing in mind that you have inquired of the witness along this same line, the objection is overruled.

A. There would not be any difference in one day.

(Transcript 86.)

Recross-examination:

I said it was not necessary to examine this security because the notes showed that no interest had been paid upon

them for a year or two. I have been examining banks in the State of Kansas during the deflation period, during the time of short crops and low prices for crops. It is a fact that in the State of Kansas I have found hundreds and hundreds of notes of farmers that were perfectly good that would be liquidated in full, where they owned land clear that was behind the notes and where the interest had not [fol. 196] been paid because the man absolutely could not pay it at the time, but these were not farmers' notes.

I have found the same situation true with reference to some other classes of papers. I have had lots of experience with contractors and we always have had losses.

(Transcript 87.)

Redirect examination:

The general rule is that on the paper of contractors you take losses, that is my experience.

(Transcript 87.)

Hugh E. Wright, called as a witness on behalf of the plaintiff, testified in substance as follows:

Direct examination:

I live in Wichita, Kansas, am in the bank business and have been for about sixteen years, was formerly connected with one of the banks at Burns, Kansas. Was deputy bank commissioner of the State of Kansas during part of the year 1921 and 1922. While I was deputy bank commissioner I had occasion in the month of October, 1922, to examine the Butler County State Bank of El Dorado, Kansas. This appears to be the original report of my examination of the Butler County State Bank in October, 1922. That is my signature. The language H. F. Ferry was signed there by the defendant in this case, I swore him to that report. I think the handwriting on the back of sheet 11 and the names H. F. Ferry, C. L. King, L. D. Hadley and A. B. Ewing were signed there in my presence. I swore those gentlemen to that report on the 13th day of October, 1922, I sent the report to the banking department after it had been signed by the directors.

[fol. 197] Q. In other words, Mr. Wright, do I understand you to say that the information contained in that report, the data contained in that report, was either taken from the books and records of the Butler County State Bank, or was furnished to you by the directors who signed that report?

A. Yes, sir. Some of these answers on No. 9 sheet are observations. They are not material. This is all taken from the records, and from the information given us by the officers of the bank, so far as I know.

Mr. Geddes: The plaintiff now offers in evidence Exhibit 17, consisting of 25 sheets, except sheets 9 and 10, the same being the examiner's report of the condition of the Butler County State Bank of El Dorado, Kansas, at the close of business October 10, 1922, and being the report to which the attention of the witness Hugh E. Wright has just been directed.

Mr. Malloy: The only thing that I can see that might be subject to objection are the observations that the witness has referred to as being not very material. If it should transpire that they are material, I want the opportunity to object to them.

Mr. Geddes: I took out the two pages in my offer here, sheets 9 and 10.

The Court: The objection will be overruled, with that understanding.

(Transcript 88-90.)

When an examiner's report is made up it is submitted to the directors to sign and the requirements made by the examiner on the report are exhibited to the directors. There is a formal requirement in this report in regard to excess loans. I don't know that I called their attention to that. I found twelve excess loans in there amounting to [fol. 198] $776,038.36. I examined this same bank sometime early in the year 1922. This is the report of my examination of the Butler County State Bank in January, 1922. These pages from No. 1 to No. 11 except the slip in lead pencil and except page 9 is my report made of the Butler County State Bank in January, 1922. That is my signature C. L. King, H. F. Ferry, A. B. Ewing, L. D. Hadley

and T. A. Kramer, signed that report and swore to it before me and I sent it to the Bank Commissioner of the State of Kansas.

(Marked Exhibit 18.)

Mr. Geddes: The plaintiff now offers in evidence Exhibit 18, consisting of sheets numbered 1 to 11, except sheet No. 9.

Mr. Brewster:

Q. How many sheets contained in that report did you show, personally, to these directors and officers?

A. Just those they signed.

Q. The other sheets of the report, they never saw?

A. So far as I know, they never saw them.

Mr. Brewter: I object to Exhibit 18 as being incompetent, irrelevant and immaterial, except as to the sheets signed by the officers and directors of the bank.

Overruled.

The Court: This objection is overruled in view of the fact that it has already been ruled that any comment that may appear in the nature of suggestions or conclusions will not be considered in evidence.

Mr. Malloy: Then, I take it that these comments noted upon these pages are not controlling, if later on we find them objectionable.

Mr. Geddes: I do not care anything about the comments shown on there by the bank examiner. I am offering just what the report shows that the records of the bank show.

(Transcript 90-92.)

[fol. 199] On page 11 of this report under the heading of requirements the name H. E. Wright is my signature.

At the top of page 11 where it says "Notice to officers and directors" and to the bottom of the page where it says "we hereby acknowledge receipt of the notice to officers and directors of which the above is a true copy and we do hereby agree to comply with the terms thereof and to notify the bank commissioner when the same has been done," the name- C. L. King, H. F. Ferry, L. D. Hadley, A. B. Ewing, and T. A. Kramer were signed. I think one officer took

the paper around and had the other sign it, the names were written there at the time I signed it.

I examined the Butler County State Bank of El Dorado, Kansas, in September, 1921. I think this is the report of my examination of the Butler County State Bank in September, 1921, except sheets 9 and 10. The report consists of data taken from the books and records of the Butler County State Bank at the time of the examination and from statements made to me by the directors of the bank and except the requirements at the time the names were signed on sheet 11. The requirements were in it. I think I exhibited the list of additional requirements to the directors and officers of the Butler County State Bank at the time I made up the report.

Mr. Geddes: The plaintiff now offers in evidence Exhibit 19, consisting of 24 sheets, numbered from 1 to 11, except the two sheets numbered 9 and 10.

Mr. Brewster:

Q. How many of these sheets were exhibited to the officers and directors?

Mr. Brewster: We object to the sheets, other than the ones signed by the officers and directors of the bank.
[fol. 200] The Court: All that part of the report which is a reproduction of the data coming from the records of the bank will be received in evidence, over the objection of Mr. Brewster. The objection is sustained as to the balance.

(Transcript 92-94.)

Cross-examination:

I cannot recall when I finished the examination, the first sheet will tell. It was 11:00 A. M. I don't recall whether I took the train from here that day between 11:00 and 12:00 o'clock or not. The chances are I did. The requirements were all written up quite a little in advance of the time they signed it. I am sure they did not see the green sheet. I learned that they made a trip to Topeka about this report.

I know that the recommendations in the report were not enforced by the commissioner. I cannot say that they

saw the additional requirements, it was made before the others were signed. But I don't know that they saw it at all. There was a copy of that left with them it was all prepared and a copy left with them but I don't know that they saw it till after I had gone.

Mr. Malloy: I wish to object to the sheet of white paper, headed, additional requirements, attached to the requirement sheet of the Butler County State Bank, for the reason that it does not appear to have been shown to these directors and officers prior to the time their signatures were attached to this sheet; and if not, they should not be bound by any of the contents of it. As a matter of fact, their testimony will be that it was not shown to them; and for the further reason that nothing was done on the chief recommendation made on this sheet.

[fol. 201] The Court:

Q. This sheet is one you left a copy of with the bank officers?

A. I left a copy of that, and the blue sheet, too.

Q. You are positive that you left a copy of this particular sheet?

A. Yes, sir, we left a copy with them, but I do not know that I left it with them.

Q. Where did you leave it?

A. I probably left it on the table, in the director's room.

Q. Both of these sheets were written before that one was signed?

A. Yes, sir, but I do not know that they read that white sheet over before they signed the blue one.

By Mr. Malloy:

Q. Do you know that they read either of those sheets?

A. No, I don't know, but I know they had the blue one.

The Court: The objection is overruled.

Mr. Bond: I make the same objection to Exhibit 19, on behalf of the defendant Hadley.

Overruled.

Exhibit 19 is read to the jury by Mr. Geddes, as follows:

(See page 347.)

(Transcript 94-95.)

Redirect examination:

I am acquainted with C. S. Bowman. At the time I made this examination he was a deputy bank commissioner of the State of Kansas. He was with me at the time I made this examination in September, 1921.

(Transcript 95-96.)

[fol. 202] Recross-examination:

I became an examiner about the first of July, 1921, prior to that time had been engaged in the banking business at Burns, Kansas, cashier of Exchange State Bank, had been cashier for six years. The capital of the bank is ten thousand. I had no experience as a bank examiner prior to July, 1921. After taking employment in 1921, I assisted other examiners two or three weeks in July and then I was in Salina on some special work till about the first of September. The Butler County State Bank was not the first bank I examined as a bank examiner. I suppose I had examined a dozen by myself. In my examination made in 1922 I made no requirements this heavy list of requirements was made on my first trip here as a bank examiner. I do not remember whether in my earlier report, among the paper criticized, was that of the Midco Packer Company and Robinson or not. The mere fact that paper is made beyond the legal limit does not necessarily mean that the paper is not collectable. It means that the bank has loaned to this particular party an amount beyond the limit prescribed by law. The paper may be perfectly good. I don't remember on my first examination of telling Mr. Ferry and Mr. King that I was in a hurry to make the train. I usually was. I don't remember of having them telephone Mr. Kramer or that he came to the station and signed the report there. I have heard that it is a fact that at times at the conclusion of the examination the last sheet, referred to as requirement sheet, has sometimes been signed up by the officers or directors without the requirements being filled in but I never had that sheet signed up till after it was filled out. Mr. Kramer signed it that is all I know about it. I don't suppose I read [fol. 203] it to him. Many of the requirements which I referred to as additional requirements in the September, 1921 examination, for example, charging out paper within a certain period of time is predicated upon their obtaining these

funds by paying in fifty per cent of the capital stock or by collection or by something.

As an examiner for the department I directed the calling of a meeting of the stockholders and the levy and the collecting of the assessment I did not take up with the department before attempting to do it, whether I had that power and authority, as a matter of fact I did not have it. It amounted to no more or less than a recommendation to the department to be reflected back by the department upon these men, if approved.

On page 10 of the report of September, 1921 is a sort of resume showing how the situation could be worked out under my recommendation. That is upon the assumption that the fifty thousand dollar assessments upon the capital was paid in in accordance with my recommendation. There would be ample funds out of which to pay this criticized paper without leaving the capital of the bank impaired, that was the way it looked to me.

(Transcript 96-100.)

N. R. Oberwortmann, recalled as a witness on behalf of the plaintiff testified in substance as follows:

Direct examination:

The file marked examiners report close of business March 8, 1921 Butler County State Bank, El Dorado, Kansas, is one of the files contained in the office of the bank commissioner of the State of Kansas.

[fol. 204] I knew Samuel Bradley in his life time I know that he is not living now. That is the record of a report on file in the office of the bank commissioner of the State of Kansas .

(Transcript 101.)

L. D. Hadley, called as a witness on behalf of the plaintiff testified in substance as follows:

Direct examination:

I am one of the defendants in this case. The paper marked Exhibit 20 consisting of twenty-four pages to which you direct my attention and to the writing J. B. Adams,

C. L. King, A. B. Ewing, L. D. Hadley is the handwriting of J. B. Adams and of A. B. Ewing and of C. L. King and of L. D. Hadley, I know the handwriting of each and each one of those men. I never met Samuel Bradley only on that occasion.

I signed my name to that report on page 11 of Exhibit 20 I know the handwriting of C. L. King, J. B. Adams, A. B. Ewing and L. D. Hadley. L. D. Hadley is my handwriting, A. B. Ewing is in Mr. Ewing's handwriting, C. L. King is in Mr. King's handwriting and J. B. Adams is in Mr. Adams' handwriting. That is my signature, it is dated March 11th, 1921. Mr. Bradley at that time was at the Butler County State Bank making an examination.

Mr. Geddes: The plaintiff now offers in evidence Exhibit 20, consisting of 24 sheets.

Mr. Brewster: The defendant, C. L. Harris, as executor, objects to Exhibit 20 as being incompetent, irrelevant and immaterial, and not proper foundation having been laid for its introduction in evidence.

Mr. McKay: The defendant, H. F. Ferry, joins in the objection made by the defendant Harris, and makes the [fol. 205] further objection that the document was not signed by him in any place, and could not be binding on him in any particular.

And the defendants Ewing and King join in the objection made by the executor.

The Court: The instrument will be admitted on the same basis as the other have been admitted, and the objection will be sustained to the same extent as in the case of the others.

Mr. Bond: I desire to make the same objection on behalf of the defendant Hadley, and the further objection that the instrument has not been properly identified.

The Court: The same ruling.

Mr. Woodward: I desire to make the same objection on behalf of the defendant Lyon.

The Court: The same ruling.

Exhibit No. 20 read to the jury by Mr. Geddes, as follows (See page 349):

Witness excused.

(Transcript 102-103.)

W. D. Kinnaman, called as a witness on behalf of the plaintiff, testified in substance as follows:

Direct examination:

I live at Sedan, Kansas, am cashier of the Sedan State Bank, have been in the bank business since 1913, was deputy bank commissioner or bank examiner under Walter E. Wilson. I am acquainted with C. L. King, H. F. Ferry, A. B. Ewing. I knew J. B. Adams in his life time. I made an examination of the Butler County State Bank in September 1920. The file you hand me is the report of my examination of the Butler County State Bank made in September 1920, at the time I made the examination I did not exhibit [fol. 206] to the officers and directors of that bank, the confidential report. The Exhibit No. 21 consisting of 11 sheets numbered from 1 to 11 constitutes my report made to the bank commissioner of my examination of the Butler County State Bank of September 1920.

The data assembled in this report as regards the resources, liabilities, notes and overdrafts and all of the data here is collected from the books and records and papers and from the information given to me by those gentlemen whose names are signed to the reports.

Mr. Geddes: The plaintiff now offers Exhibit No. 21 in evidence.

Mr. Brewster: The defendant C. L. Harris, as executor, objects to Exhibit 21 as being incompetent, irrelevant and immaterial, and no proper foundation having been laid for its introduction in evidence.

The Court: There has been no showing that the directors signed it. Will that be admitted?

Mr. Malloy: There is no question about the signatures.

Mr. Geddes: I am offering the exhibit, but not the confidential report.

Mr. Bond: I object to Exhibit 21 as being incompetent, irrelevant and immaterial, and not binding on Mr. Hadley, it is not signed by him.

The Court: The objections will be overruled, under the same conditions as heretofore stated.

Mr. Woodward: I desire to make the same objection on behalf of Mr. Lyon, and the further objection that it is too remote from the time the plaintiff seeks to recover.

Same ruling.

[fol. 207] Mr. Malloy: The defendants, King, Ferry and Ewing, have no objection, I think we are getting a little remote, however.

Exhibit 21 read to the jury by Mr. Geddes, as follows: (See page 351.)

(Transcript 104-105.)

I examined the Butler County State Bank in the month of March, 1920. The whole report is here. The names C. L. King, A. B. Ewing, J. B. Adams and H. F. Ferry and the same names on the reverse side of sheet 11 were signed there by the parties named at the time I made the examination.

Mr. Geddes: This report has been marked Exhibit 22, and I now offer in evidence, on behalf of the plaintiff, Exhibit 22, consisting of pages numbered from 1 to 11, and consisting of 20 sheets.

Mr. Woodward: I object to Exhibit 22 on behalf of the defendant G. W. Lyon, as incompetent, irrelevant and immaterial, not having been signed by him, and not shown to have been exhibited to him, and for further reason that it is too remote from the period for which the plaintiff seeks to recover.

Overruled.

Mr. Brewster: I make the same objection on behalf of the defendant, C. L. Harris, as exentor.

Overruled.

Mr. Bond: I make the same objection on behalf of the defendant Hadley. Mr. Hadley did not sign the papers.

Overruled.

The Court: The report will be received on the same terms as heretofore stated. The report in full will be considered [fol. 208] as evidence against those parties signing it; and only that part of the report which purports to be a restatement of the books of the institution will be received as against any of the other defendants who did not sign; and any conclusions, suggestions or recommendations in the

report made by the examiner will not be received, except as against the parties who signed it.

(Transcript 105-106.)

The data contained in Exhibit 22 with reference to notes, overdrafts, excess loans, amount of debt and the maturity of the paper is all taken from the records and books and the papers of the Butler County State Bank of El Dorado, Kansas.

Mr. Brewster: The defendant C. L. Harris, as executor, objects to this question as being incompetent, irrelevant and immaterial, no proper foundation laid, too remote and not binding on this defendant.

Overruled.

Same objection by the other defendants.

Overruled.

Exhibit 22 read to the jury by Mr. Geddes, as follows: (See page 352.)

Witness excused.

(Transcript 106-107.)

W. F. Benson, called as a witness on behalf of the plaintiff, testified in substance, as follows:

Direct examination:

For a time I was the assistant receiver for the Butler County State Bank, of El Dorado, Kansas. I took charge of that bank as assistant receiver the first week in April, 1923, and was assistant receiver until September 20 or September 21, 1925.

[fol. 209] Q. Have you any record, or is there any record, to which you can refer, and from which you can ascertain how much money you have been able to collect as receiver of the Butler County State Bank, of El Dorado, Kansas, from the assets of that bank, which came into your hands as such receiver?

A. The books that are in the hands of the receiver at the present time would show that.

Q. What particular record that the present receiver has will show that?

A. Well, the record, as deposited in the bank, bank deposits and endorsements on the notes, and the liability ledger.

Q. Now, here is a whole bunch of books, Mr. Benson. I wish you would step over there and see if you can find the records you want.

A. I have a personal record in my pocket, given to me when I went in, and also when I checked out.

Q. Does that record that you have show the particular items of indebtedness, and the amount you collected on each of them, if any?

A. No, sir, it just shows the amount of the loans and discounts, in the total, at the time I took charge of the bank, and the amount at the time of leaving the bank.

Q. Let me see that record that you have, Mr. Benson.

Q. Now, after you went in as receiver of the bank, Mr. Benson, you examined the books and records with reference to ascertaining what assets and resources, and what liabilities the bank had?

A. Yes, sir.

Q. And from that examination, Mr. Benson, are you able to state to the jury with reference to the resources and as- [fol. 210] sets now? The amount of loans and discounts.

Mr. Brewster: The defendant, C. L. Harris, as executor, objects as being incompetent, irrelevant and immaterial, and not the best evidence.

Mr. Geddes: I can get the records here, and take them up, loan by loan.

Mr. Brewster: The loans are in now.

The Court:

Q. Have you a summary of that statement, from the books, Mr. Benson?

A. Yes, I have a statement, or a copy of a statement made by the banking department. This copy is signed by Mr. Quinn, who was an employee of the bank at that time, and who assisted the banking department in making the examination.

Q. Have you ever checked that book with the bank's books, to determine whether or not it is a correct statement?

A. Not item by item, no.

The Court: The objection is sustained.

Mr. Brewster: We have no objection to his reading off of that statement the amount of the loans.

(Transcript 108-109.)

The amount of real estate loans of the Butler County State Bank, of El Dorado, Kansas, as of date March 29, 1923, was $58,507.74. The amount of loans and discounts, $1,293,952.18. The amount of revenue stamps that came into my hands, $611.47. War Savings Stamps, $100.00, Liberty Bonds, $12,950.00, Overdrafts, $21,862.31.

I took possession of the bank building when I became receiver, and carried that building as a resource of the bank. In dollars and cents, it was carried at that time at $62,500.00.

[fol. 211] Some furniture and fixtures came into my hands listed as of that date at $8,000.00. I found that the bank owned other real estate than the bank building. It is listed among the resources of the bank, and designated as "Other real estate owned." It was carried at $37,806.10. An item of resource as "Insurance Premiums" was carried in the amount of $7,383.10. I listed the money resources of the bank. The amount of that item is $5,640.40. Also, an item designated "Collections" in the amount of $180.00.

After I became assistant receiver, from examining the books and records of the bank I found that it had certain amounts of money on deposit outside of its own bank. The Commercial National Bank of Kansas City, Missouri, $25,056.51; The Commerce Trust Company, Kansas City, Missouri, $8,273.88; The First National Bank of Wichita, $781.94; The Mechanics National Bank, New York, $2,512.28; The National Bank of Commerce, St. Louis, $650.75; Citizens State Bank, El Dorado, $1,174.39; Citizens State Bank, El Dorado, Kansas, another account $20,698.31; Prudential Trust Company, Topeka, $14,593.58.

The actual currency coming into my hands when I took charge was $24,090.00. A small amount of silver amounting to 50 cents. There was carried among the resources

of the bank an item designated "Expense," in the amount of $9,409.21. An item designated "Interest Paid," $5,-152.84. Bonds with the State Treasurer of the State of Kansas, $9,000.00. These items constitute the total items of the resources that came into my hands as assistant receiver of the Butler County State Bank. The total of these items is $1,609,287.49.

I made some investigation and caused to be made up an itemized statement of the nature and character and amounts [fol. 212] of the liabilities of the bank. One of these items is designated "Surplus," $25,000.00; another "Interest Received," $14,935.16; "Individual Deposits," $744,367.71; "Certificates of Deposit," $387,306.15; "Savings Deposits," $83,936.19, "Cashier's Checks," $1,632.40; Certified Checks, $5,039.10; Deposits due Other Banks, $45,230.18.

I have an item listed as "Re-Discounts," $150,188.60. A rediscount is paper belonging to this bank that has been rediscounted with the other banks in order to raise money. In other words, a note, for instance, payable to the Butler County State Bank has been sold to the First National Bank at Wichita on a re-discount, the re-discounted note to be in the purchasing bank.

Among the liabilities of the Butler County State Bank I find an item listed as bills payable, $387,026.00; Liberty Bonds, with agreement to re-purchase, $12,950.00; Capital Stock, $100,000.00. From my examination of the books and records of the Butler County State Bank, after I became assistant receiver, the total liabilities of the bank outside of the capital stock and surplus amounted to $1,584,287.49. That is as of date March 1, 1923. I was assistant receiver of the bank about three years and six months. I made an endeavor to collect up the obligations of the bank.

Q. How much money, in dollars and cents, were you able to collect, of the accounts and obligations due to the Butler County State Bank, or to realize from the sale or disposition of any of its assets, during the time that you were assistant receiver of the bank?

Mr. Brewster: I object to this question as being incompetent, irrelevant and immaterial, not tending to prove or disprove any issue in this case.

Overruled.

[fol. 213] Mr. Bond: I make the same objection on behalf of the defendant, L. D. Hadley.

Mr. Malloy: The same objection on behalf of the defendants, King, Ferry and Ewing.

The Court: The evidence may be considered by the jury in so far as it may assist them, if it does assist them, in determining what the value of the assets were at the time of the closing of the bank. The objections will be overruled.

Mr. Brewster: No showing has been made as to the effort made by the receiver to collect this paper.

The Court: He will be subject to cross examination on that point. He said he made an effort.

By Mr. Benson:

A. I can give the items, but I cannot give the total without figuring it.

(Transcript 109-114.)

On loans and discounts it is the difference between the amount of $1,293,952.18, the amount at the time I took charge of the bank, and the amount $812,626.38, the amount at the time I was relieved from the receivership. That difference represents the amount I collected on the loans and discounts. In other words, $481,325.00. That, however, does not mean in cash, in every instance. The loans and discounts were reduced that much by reason of collections made in different ways; for instance, taking over a piece of real estate on an agreed price, or by compromising a loan. We either took cash or realty. $481,325.00 represents either actual cash collected by me, or real estate taken in at an agreed price, and in addition all deposits that were on hand at the time the bank closed, were credited upon any note that the depositor might have had in the bank at the date of closing. That would reduce the loans and discounts that much, whatever the deposit mig*th* be.

[fol. 214] I made an effort to sell the building. I was not able to sell it. I have lived just on the outskirts of El Dorado twenty or twenty-five years, and have owned different pieces of real estate in El Dorado during all of those years. Am familiar with the location of the Butler County State Bank, of El Dorado, Kansas, and with the way it is equipped. I was not able to sell it.

Q. Would you be able to state to the jury, Mr. Benson, what was the face value of the loans or discounts on which you were able to realize $481,325.80, either in cash, or in real estate?

To which the defendants all object as being incompetent, irrelevant and immaterial, and calling for the conclusion of the witness.

Mr. Geddes: I mean, what did he realize?

Mr. Malloy: We have no objection to that.

A. I could do so if I had access to the books, or if I had copies of my records, that I had. I haven't them here.

By Mr. Geddes:

Q. Is the record or book you want in any of these?

A. I couldn't say.

Q. Will you look and see if it is here, Mr. Benson. If it is here, I will get what you want.

The Court: If you have a judgment of about what would be the face value of it, Mr. Benson, you might give us that.

Mr. Brewster: Is that the face value of what he did collect?

The Court: Yes, the face value of the resources out of which he collected the $481,325.80.

By Mr. Benson:

A. A very large percentage of the $481,325.80 was collected in cash.

By Mr. Geddes:

Q. A very large percentage of it?

[fol. 215] A. Yes, sir.

Q. Do you mean, in full?

A. Yes, sir.

Q. Now, Mr. Benson——

A. I might add that there was four or five items here in the list of resources, under date of September 21, 1925, which consisted of dividends paid, and balance in the hands of the bank commissioner, which amounted to approximately forty thousand dollars. That was all cash. The rest of that was probably compromised and real estate taken over,

and some chattel mortgages taken over, and judgments taken.

The Court:

Q. You spoke about compromises, Mr. Benson. Have you a judgment of about what per cent was realized on the face of such indebtedness?

A. About fifty per cent.

Mr. Malloy:

Q. Are you referring to the real estate account that was in the bank? Or to the real estate that you took in, in settlement of some of those notes?

A. More particularly, that that we took in. We took in some property that we didn't haggle on the price very much. In fact, we figured that we could not get anything else, other than the property, so the price didn't cut very much figure.

(Transcript 109-117.)

Among the notes that came into my possession as receiver of the Butler County State Bank were two or three notes of E. J. Andrews: two, at least, and I think, three. The approximate amount of the two notes was $36,000.00 some odd dollars.

I have in my possession one receiver's record of the Butler County State Bank, of El Dorado, Kansas. It is [fol. 216] the bills receivable record. It is one of the records that was kept at the time I was assistant receiver of the bank. I find a record of a note of E. J. Andrews. The date of the note is not given, just the maturity. The maturity is 1-26-23. The amount of the note, $18,783.72.

Q. How much, if anything, did you collect on that note during the time you were the assistant receiver of the Butler County State Bank?

Mr. Brewster: The defendant, C. L. Harris, as executor, objects to this question as being incompetent, irrelevant and immaterial.

Mr. Bond: The same objection on behalf of the defendant, L. D. Hadley.

Mr. Malloy: The same objection on behalf of the defendants, King, Ferry and Ewing.

The Court: The objections are overruled.

There was credited by the note being offset by two items, one of $1.49 and one of $40.00. That leaves the balance $18,742.23.

Mr. Malloy: As to all this line of examination, as to what was collected after the closing of this bank, and after the receiver took charge, we submit, this has no bearing whatever on the matter of the knowledge of thes- directors, at the time the deposits were made, and we want, generally, to object as being incompetent, irrelevant and immaterial to all of this line of testimony.

Overruled.

The Court: This evidence may be considered by the jury in so far as it may assist them in determining what this paper may have been worth before the closing of the bank, and what relation that had to the condition of the bank before it was closed.

[fol. 217] I get the amount $41.49 from its being the individual balance of E. J. Andrews in the bank at the time the bank closed.

I find another note of E. J. Andrews, the maturity of which is February 1, 1923, amount $18,012.72. I was able to collect $9,000.00 on the note. The note has been surrendered to Mr. Andrews on a compromise. In other words, $9,000.00 was accepted in full payment of the note.

I have a note of L. L. Beye, the date of maturity being January 9, 1923, amount $11,613.37. I collected by an offset $328.10. This offset was the amount of his individual credit in the bank, subject to check the date the bank closed, leaving a balance of $11,285.17.

I find another note of L. L. Beye, a demand note, $378.04. There is a little credit. I do not remember what the item came from. The credit is 27 cents, leaving a balance of $387.57.

I find another note of L. L. Beye. The date of maturity is January 17, 1923. The note is $15,250.00. I collected nothing on this note. The record discloses another note

of L. L. Beye, maturity date April 17, 1923, amounting to $18,750.00. There was a compromise on this note. I will have to have the record before me before I can answer how much was collected on it.

There are four notes of L. L. Beye, one $11,613.27, a demand note of $378.84, a note of $15,250.00 and a note of $18,750.00.

The assistant receiver's register discloses a note of the Fidelity Refining Company. The Fidelity Refining Company's obligation consisted of fifteen first mortgage bonds on their plant, as made by them, or put up by them as collateral, the amount of which was $57,240. There were seven [fol. 218] other bonds considered as part of the indebtedness of the Fidelity Refining Company first made by officers or men connected with the concern, held as collateral to the notes, as made by these individuals of the concern. One bond was for $4,581.69, made by H. C. Miller, one bond, same amount, made by W. H. Odell, one bond, same amount, made by Charles A. Popkin, one bond, of $4,572.78, made by C. E. Redstein; three bonds made by A. H. Stone, $13,660.57, the total of the three making $89,218.42, which covered twenty-two installment bonds of the Fidelity Refining Company. I did not collect anything on this indebtedness. That is in the Federal Court.

There are some notes of which the Fidelity Refining Company was endorser. Note of the Red Ball Refining Company, date August 1, 1921, amount $25,689. I collected nothing on this note.

Another note of same amount and same date, and the same maturity of the Red Ball Refining Company, on which the Fidelity Refining Company is endorser, and another note made by the Red Ball Refining Company, same date, same maturity, for $25,690.00. I don't think I collected anything on these notes.

The assistant receiver's records discloses a note of C. W. Meredith Contracting Company, the maturity of which is December 22, 1920, amount $20,000.00. This note was also paid in full.

Another note of the C. W. Meredith Contracting Company, made December 22, 1920, amount $20,000.00. I collected $801.22 on this. The $801.22 came from the sale of personal property that the bank had a mortgage on.

The balance due on the note at the time I ceased to be the assistant receiver was $9,933.08. The balance collected other than the $801.22, came from the sale of personal prop-
[fol. 219] erty under a chattel mortgage. The money that paid the other $20,000 note in full came from the sale of personal property under chattel mortgage.

There is another note of the C. W. Meredith Contracting Company, amount $20,000.00, maturity 12-22-20. I collected nothing on that note, and there was $20,000.00 due when I ceased to be receiver.

There is another note of C. W. Meredith Contracting Company, disclosed by the record of $10,000.00, dated October 21, 1920. I collected nothing on that note. These notes drew 8 per cent interest.

There is another note of C. W. Meredith Contracting Company, maturity December 22, 1920, $20,000.00. I did not collect anything on that note.

There is another note of C. W. Meredith Contracting Company of $25,000.00. It is a demand note. I did not collect anything on that note.

There is another note of the C. W. Meredith Contracting Company, maturity December 22, 1920, amount $10,833.08. I collected $900.00 on that note.

There is another note of C. W. Meredith Contracting Company, amount $25,000.00 demand note. I collected nothing on that note.

There is another note of the C. W. Meredith Contracting Company, $76,000.00, maturity date April 19, 1923. That is evidently an error, as the bank closed before that time. I think the note, or a copy of it, is in the possession of the present receiver—I was mistaken,—the date of maturity is April 15, 1923. I did not collect anything on that note.

C. W. Meredith, as disclosed by the receiver's record, had a note of $400.00, maturity April 15, 1923. There was a credit by setoff on this note of $26.65, leaving a balance of
[fol. 220] $373.35. I think the note was paid.

The receiver's record that I have is the record from the time I commenced as receiver until I ceased to be receiver. I am taking the data from the record that the banking department gave to me at the time I was relieved as assistant receiver. These balances are the balances that Mr. Childs, the new assistant receiver receipted for to me.

There is a copy of a note of E. H. Meredith, maturity November 22, 1922. It is Ed. H. Meredith on the books here, in amount $19,860.00. I collected nothing on the note.

The records of the assistant receiver show a note of A. G. Williams, maturity August 20, 1921, $10,000.00. Nothing collected on that note.

Another A. G. Williams note, maturity August 22, 1921, $20,000.00. Nothing collected on that note.

Another note of A. G. Williams maturity date August 22, 1921, amount $20,000.00. Nothing collected on that note.

Another A. G. Williams note, maturity date August 22, 1921, amount $20,000. Nothing collected on that note.

Another A. G. Williams note, maturity date August 30, 1921, amount $9,500.00. Nothing collected on that note.

Another note of A. G. Williams, $15,000.00 maturity date August 8, 1921. Nothing collected on that note.

Another A. G. Williams note, a demand note, $21,000.00. Nothing collected on that note.

That is all of the A. G. Williams notes.

From refreshing my memory from the receiver's record of the Butler County State Bank, I find a note of the Mid Co [fol. 221] Packer Company, amount $15,000.00, maturity September 1, 1923. Nothing collected on that note.

Another note of Mid Co Packer Company, $15,000.00, maturity date September 1, 1923. Nothing collected on that note.

Another note of the Mid Co Packer Company, maturity date September 1, 1923, $7,155.60. I collected one item of $6.60, one of $169.33, and one of $14.58 on this note, leaving a balance of $6,965.09.

Another note of Mid Co Packer Company, maturity date September 1, 1923, $15,000.00. Nothing collected on this note.

Another note of Mid Co Packer Company, maturity September 1, 1923, $9,360.00.

When I turned this note over to the present receiver there was a balance of $7,245.90 due on it.

From having refreshed my recollection from the records of the receivership of the Butler County State Bank I find a note of L. M. Robinson, maturity date, January 10, 1922, amount $11,530.00. Nothing collected on that note.

Another note of L. M. Robinson, maturity date July 9, 1922, $4,400.00. Nothing collected on that note.

Another note of $1,000.00, maturity date July 15, 1922, $2.28 collected on this note.

Another note of L. M. Robinson of $3,500.00, maturity date July 12, 1922. Nothing collected on that note.

From refreshing my recollection from the receiver's record of the Butler County State Bank during the time I was assistant receiver and from the record that I have showing the notes, and resources and assets of the bank at the time I ceased to be receiver, I find a note of J. D. Robinson, ma-
[fol. 222] turity date August 22, 1923, amount $1,000.00. Nothing collected on this note.

Another note of J. D. Robinson, amount $1,737.41, maturity date 5-16-23, $54.62 collected on this note.

At the time I became assistant receiver of the Butler County State Bank, of El Dorado, Kansas, the total amount of overdrafts as revealed by the books of the bank was $21,769 56. While I was the assistant receiver of the Butler County State Bank I endeavored during all that time to collect up the money due the bank on the notes and to liquidate the assets of the bank.

During the time I was assistant receiver of the Butler County State Bank I did not exhaust all of the securities that were held by the Butler County State Bank to secure the paper of the Meredith Contracting Company, but I know what part of the total securities remained. There remains a 75 HP Holt Tractor, a gang plow and an old tractor at Florence. Otherwise I exhausted all of the total securities held by the bank for that indebtedness.

I have examined the items of personal property not exhausted. Have been a farmer about all my life; am familiar with tractors and gang plows and I was unable to sell them.

(Transcript 117-136.)

Cross-examination:

Mr. Wilson was in charge of the bank from the time it closed until I took charge. The amount of currency when I took charge was the condition which existed when I took charge. There was quite a bit in cash or currency when Mr. Wilson took charge. I am familiar with the bank building, and its location, its construction and style of architec-
[fol. 223] ture. I think it is not a building adapted for any

other purpose than the banking business. It was designed and arranged to be used as a bank. My inability to sell was due to the lack of a market for that kind of a building. It is one of the best buildings in a town of this size for banking purposes, in Kansas.

I was formerly Bank Commissioner of the State of Kansas, and I have had a general broad experience over the state in banking matters.

The assets of any banking institution decrease in value upon the closing of the doors of the banking concern with their value while the bank is a going concern. I think I could have collected more if the bank had been a going concern, and I had been in charge of it, instead of it being a failed institution.

I endeavored to turn the mortgaged property and things of that sort, the assets of the bank, into cash as soon as I reasonably could, to an extent that they were sold at a forced sale. The Butler County State Bank, as security for one of these notes, holds a mortgage on a ranch in Hodgman County, Kansas. The proceeds from the mortgage on that land are not shown in my collections. There will be, in addition to these, collections made.

The bank also held a mortgage on the Andrews land in Butler County. Mr. McKay thought the mortgage did not enter into the bank's loans and discounts. In other words, it is not shown in the loans and discounts. It is carried in the mortgage account. The bank had a chattel mortgage on a herd of cattle. It exhausted that mortgage and the proceeds are reflected in these collections. I think there is 480 acres of fairly good land in the Hodgman County ranch.

[fol. 224] The first L. L. Beye note has been paid by compromise. The agreement of compromise was made while I was assistant receiver. It might have been consummated by Mr. Childs, after he became receiver.

The Fidelity Company line of notes were secured by first mortgage on the company's refinery, its stills and the Sluss lease. That is a producing lease. When I became receiver proceedings were pending in the Federal Court for the foreclosure of the mortgage. The proceeds of that foreclosure have not been received and are not reflected in my collections.

The Meredith line of notes and the Williams notes were secured by chattel mortgage covering a large amount of property and equipment. This property and equipment came into my hands as receiver. An effort was made, after closing the bank, to operate the Meredith Contracting Company as a going concern. I did not attempt to sell this property immediately after my appointment. They had an agreement with the banking department to finish up a certain amount of grading for the Santa Fe Railroad Company. They continued until that was finished, which I think was in August, possibly later than that. All of this property was in the hands of the Meredith Contracting Company for the purpose of finishing this grading, or a good portion of it.

As receiver I exercised supervision over the grading, and received the proceeds from the work. I cannot say the Meredith overdraft was created in connection with that grading. It was there when I went in.

These collections that I have testified to relate only to the collections made by me during my administration. I know nothing about what has been collected since I ceased to be assistant receiver.

(Transcript 136-141.)

[fol. 225] Redirect examination:

From refreshing my recollection from the receiver's register of the Butler County State Bank, and the records made up at the time I ceased to be receiver, I find that C. L. King had a note in the bank, date April 30, 1923, amount $4,000.00. I collected $51.92 on this note. It was an offset credit representing the deposit of the defendant, C. L. King in the Butler County State Bank at the time it failed. That is all I collected on that note.

There is another note of the defendant, C. L. King, amount, $3,500.00, maturity April 8, 1923. I did not collect any of this note.

There is a note of C. L. King and J. B. Adams, amount $10,000.00, maturity date April 2, 1921. I did not collect any part of this note.

There is a note of W. K. Ewing, maturity April 14, 1923, amount $4,950.00. I collected no part of this.

W. K. Ewing is a son of the defendant, A. B. Ewing.

There is a note of R. W. Ewing, maturity date, June 1, 1923, amount $560.00. I collected no part of this note.

Another note of R. W. Ewing, maturity June 4, 1923, amount $560.00. I collected $223.02. This fund came from an obligation that the bank created with Mr. Ewing while it was under receivership, being premium on fire insurance policy.

Another note of R. W. Ewing, maturity date April 1, 1923, $4,080.00. I collected no part of that note.

A note of Noah Artz & Son, maturity May 29, 1923, $36,425.00. There was a payment on it of $1,328.43. My recollection is that was a payment a few days before the bank closed. The balance remaining at the time I ceased to be receiver was $35,096.57.

[fol. 226] There is a note of Will Artz, maturity date March 15, 1923, amount $9,571.23. There was a balance due on that note at the time I turned over the receivership, of $8,721.44.

The paper involved in the suit in the Feneral Court is the paper of the Fidelity Refining Company.

The amount of the overdraft of the C. W. Meredith Contracting Company, at the time I ceased to be assistant receiver of the Butler County State Bank, was $20,305.08.

(Transcript 141-145.)

Recross-examination:

I know nothing about what has been done since I ceased to be assistant receiver.

The bank holds, in addition to a first mortgage on land in Finney County a second mortgage on land in western Kansas, securing the note of E. J. Andrews.

(Transcript 145-146.)

W. R. Childs, recalled as a witness by the plaintiff, testified in substance as follows:

Direct examination:

I have assembled from the books and records of the Butler County State Bank and from the records of receivership papers and security which were turned over to me as

assistant receiver of this bank a list of the unpaid notes from which the balance due on the unpaid notes can be ascertained. I have a note of E. J. Andrews, the balance due on that note remains the same as it was. The balance due is $18,742.23.

There is an item of $6,954.26 concerning 480 acres of Finney County, Kansas, land. We have no note to support that item. We are trying to clear the record in the [fol. 227] courts now as to whether that is a mortgage or a deed. The court will have to determine whether he owes that $6,954.26 to the Butler County State Bank. Andrews is denying liability.

L. L. Beye owes the Butler County State Bank a total of $16,638.00 that is within a few dollars of it. I have been unable to collect anything on the Fidelity Refining Company indebtedness to the Butler County State Bank since I took over the receivership. I have been unable to collect anything on the Ed H. Meredith indebtedness since I became assistant receiver of the Butler County State Bank. I took over a piece of property under an order of the court at $2,600.00 on the A. G. Willams indebtedness and that is all I have collected since I became assistant receiver of the Butler County State Bank, on the A. G. Williams indebtedness.

I have collected nothing on the Mid Co. Packer Company. That indebtedness is the samenow as it was when I became assistant receiver. I have collected nothing on the L. M. Robinson indebtedness and that indebtedness remains the same as it was when I took over the assistant receivership. I have collected nothing on the Red Ball Refining Company indebtedness since I became assistant receiver of this bank. I have collected no money on the C. W. Meredith Contracting Company indebtedness since I became assistant receiver of the Butler County State Bank and have taken over no property of any kind to be applied on it. The C. W. Meredith Contracting Company indebtedness is the same now as it was when Mr. Benson turned over the assistant receivership of the bank to me. The C. W. Meredith indebtedness the balance of $373.35 the morgage was foreclosed and the [fol. 228] property sold the money has not yet been paid. I purchased the property as receiver.

I have collected nothing on the J. G. Robinson indebtedness since I took over the receivership of the Butler County State Bank. I have not colleted the C. L. King note of

$3,948.08. I have not collected the C. L. King $3,500.00 note.

On the Noah Artz and Son note, due May 29th, 1923, originally $36,425.00 on which a payment of $1,328.42 had been made, I have collected $3,000.00 in cash. The balance of that indebtedness at this time is $32,096.47.

The balance due on the Will Artz note of $8,744.00, we settled for $750.00 it was either that or nothing. The loss on that note is $6,971.44.

I have collected nothing on the overdrafts of $20,305.08 of the Meredith Contracting Company, that remains the same. On the R. W. Ewing note of $5,606.00 we took over a half interest in 400 acres of land. He had these three notes. I took this half interest on this 480 acres of land as settlement of the R. W. Ewing notes, with the approval of the court and got a deed for the land. The W. K. Ewing note for $4,950.00 has not been paid, it is in litigation. On the L. L. Beye indebtedness in actual cash I have collected $5,740.17 principal and $2,413.75 interest, which was paid by the Adams estate. I have collected nothing from L. L. B-ye.

Under date of March first, 1926 the total amount of overdrafts of the Butler County State Bank of El Dorado, Kansas, was $20,902.75.

The paper that you hand me is the receiver's report, Mr. Benson's report as receiver dated March 31st, 1925. This [fol. 229] is a report made up by Mr. Ednoffer, assistant bank commissioner. I have not collected a penny on the A. G. Williams note of 8-20-21 of $10,000.00 or the A. G. Williams note of 8-22-21 of $20,000.00 *or the A. G. Williams note of 8-22-21 of $20,000.00* or the A. G. Williams note of 8-30-21 of $20,000.00 or the A. G. Williams note of 8-30-21 of $9,500.00 or the A. G. Williams note of 8-8-21 of $15,000.00 or the A. G. Williams note of 6-30-22 of $12,000.00. I have endeavored as hard as I know since I became assistant receiver to collect up the money due the bank and sell the assets and close it up, as assistant receiver. I came into possession of the bank building, I certainly have tried to sell it and have had no offers on it and only been able to get tentative offers. I still have it on my hands.

(Transcript 147-157.)

Cross-examination:

I am in the real estate and insurance business, never was in the banking business and have had no experience in the banking business. I know nothing about the records or the books of a bank only as my general intelligence tell me—since I have been receiver I have been attempting to have kept an accurate record of the assets that come into my hands and the moneys that were collected on the liabilities. The method in which it has been kept you will have to ask the bookkeeper about. As receiver I hold a lot of uncollected paper. I have been over these notes carefully a good many times. I did come into possession of some notes that I collected in full. I have talked with Mr. E. J. Andrews. I made an effort to collect that paper. I know something about the litigation now pending for the collection of it. We brought foreclosure proceedings on the Finney County [fol. 230] land. I have run down everything I could find, hidden assets, or anything of that kind I have done my best to collect it. He has agreed to make the settlement. The Finney County land is not exactly salt marsh. It is worth about $12.00 to $15.00 an acre. It is unimproved.

I know nothing about the Hodgeman County matter. I have taken some interest in that and have talked to the attorney about it.

The Court:

Q. From your investigation and your consultation with the attorney, what do you think about it?

A. We will either get the land or we will get $5,000.00 in money.

Mr. Andrews made an offer to pay $5,000.00 subject to the approval of the court. He made an offer either to dismiss the suit in Finney County, he has practically lost the suit, and he has agreed to either deed the land on the first day of September, 1926, or to pay us $5,000.00 cash. I don't know anything about the foreclosure in Hodgeman County.

I have made investigation of the L. L. Bye paper, I know where he is now located, I have made investigation there to learn whether he has any property or not. He has nothing. We took everything that he had, everything that I know anything about. I understand that he has a five acre chicken ranch in California.

Nothing whatever has been collected on the Mid Co. Packer Company paper. There is nothing back of it. I have investigated everything there is in the institution. I am working on the stuff all the time. I have investigated the J. G. Robinson and L. M. Robinson paper to see if there is any chance of collecting it. I don't know what L. M. [fol. 231] Robinson is doing now, I can't keep up with them. I don't know what J. G. Robinson is doing.

We collected a part of the Noah Artz & Son and Will Artz paper. It was secured by a second mortgage on 740 acres of land, the chattel security had run out, they are worthless. We went up there and made an investigation and we could not find anything.

That was after I became assistant receiver. We found 9 horses, 2 cows and 100 hogs. We attempted to foreclose the mortgage. We did not find any property covered by the chattel mortgage, the property covered by the chattel mortgage had been disposed of. I am familiar with the litigation involving the Fidelity Refining Company paper and the Red Ball Refining Company paper. The receiver has sold the lease on which the Butler County State Bank held a mortgage for a sum of probably $40,000.00. Part of that money is in the hands of the bank receiver now awaiting distribution. I don't know of any other assets of the Fidelity Refining Company and the Red Ball Refining Company now in the hands of the receiver of those companies.

There is a refinery property located near El Dorado which is to be sold but that is in process of litigation. The Butler County State Bank has a first mortgage on all these assets.

On the R. W. Ewing paper we took a half interest in 400 acres of land on which there is a $10,000.00 mortgage. We took the deed for the half interest in the land and gave him his paper. We sold the interest to W. K. Ewing in some of the same land and purchased his interest at sheriff's sale for $4,000.00 and hold the sheriff's certificate for the land.

(Transcript 157-163.)

[fol. 232] Further cross-examination by Mr. Malloy:

I think I stated that within the last ten days $20,000.00 had been paid on the Fidelity Refining Company paper.

(Transcript 163.)

Redirect examination:

During all the time I have been assistant receiver of the Butler County State Bank there has been employed an attorney with whom I consulted and advised from time to time in the handling of the receivership of this bank. That attorney is Mr. McKay. When we went out to find the hogs and cattle and the horses on the Artz farm we did not find them we settled that indebtedness for $750.00 either that or bankruptcy.

We settled it by approval of the court.

I cannot know how much money I will ever collect on the Fidelity Refining Company paper and the Red Ball Refining Company paper until that Federal Receivership is determined. I cannot tell how much money we will get on the one-half interest in the 480 acres of land that we took in settlement of the R. W. Ewing account subject to a mortgage of $10,000.00 and I cannot tell how much we will get on the land we took on the W. K. Ewing indebtedness. We will be tickled to death to sell the land and get the money.

(Transcript 163-164.)

N. R. Oberwortmann, recalled by the plaintiff, testified in substance as follows:

Direct examination:

Exhibit 23 which you hand me is one of the papers on file in the office of the State Bank Commissioner of the State of Kansas.

[fol. 233] Mr. Geddes: I now offer Exhibit 23 in evidence.

Mr. Brewster: I object to Exhibit 23 as being incompetent, irrelevant and immaterial.

Overruled.

The paper marked Exhibit 24 is one of the papers on file in the office of the State Bank Commissioner of the State of Kansas.

Mr. Geddes: I offer Exhibit 24 in evidence.
Mr. McKay: I object to this.
The Court: Objection overruled.

I have in my possession the last report of the receiver of the Butler County State Bank made to the Bank Commissioner,—Exhibit 25, which you hand me is one of the records or papers on file in the office of the State Bank Commisioner of the State of Kansas directing my attention to Exhibit 25 and as shown by that statement of the condition of the Butler County State Bank at the close of business on the first day of March, 1926. The amount of loan and discounts of the Butler County State Bank was $753,452.24.

As disclosed by that statement of the receiver of the Butler County State Bank the Butler County State Bank was carrying among the resources of the bank as the value of the bank building at $69,504.53 and as disclosed by that statement the amount of judgments in dollars and cents carried among the resources in favor of the Butler County State Bank was $46,822.40 and the amount of overdrafts in dollars and cents was $20,902.79 and the amount of stockholders' liability listed among the resources of the Butler County State Bank as disclosed by that statement of the receiver is $2,000.00.

Mr. Geddes: We offer in evidence Exhibit 25.
[fol. 234] To which all the defendants object as being incompetent, irrelevant and immaterial.
Overruled.
(Transcript 165-166.)

C. L. King recalled as a witness on behalf of the plaintiff.

Direct examination:

I have been engaged in the banking business about ten or twelve years, just as president of a bank. The paper

you hand me consisting of six sheets is the account of C. L. King in the Butler County State Bank, commencing November 9th, 1921. The date of the last item that appears in the column headed new balance is April 4th. It shows under date of March 29th a balance of $51.92, the date on the reverse side of this sheet from which I have been testifying, at the top of that page is 1923, the date March 29th on the reverse side is, I should judge, March 1923.

Q. I will ask you if it is not a fact that on the 29th day of March 1923 the balance you had in the Butler County State Bank was $51.92?

Mr. Brewster: I object to that as being incompetent, irrelevant and immaterial, and repetition.

Same objection by Mr. Malloy.

Same objection by Mr. Bond.

The Court: The objection is sustained as to all the defendants except Mr. King, and overruled as to the defendant King.

(No answer.)

Q. Now, Mr. King, I direct your attention to the O. D. on the reverse side of that exhibit; and I will ask you if it is not a fact that means over-draft?

Same objection as before.

[fol. 235] Sustained as to all defendants except King.

A. Yes, sir.

Mr. Geddes: I now offer in evidence Exhibit 26, consisting of eight pages, being the exhibit to which I have just called the witness King's attention.

Mr. Brewster: The defendant C. L. Harris, as executor, objects to Exhibit 26 as being incompetent, irrelevant and immaterial.

Mr. Malloy: I make the same objection on behalf of the defendants, Ferry and Ewing.

Mr. Bond: I make the same objection on behalf of the defendant Hadley.

The Court: The objections are sustained. Exhibit 26 will be received only as against the defendant King.

By Mr. Geddes:

Q. Mr. King, I will ask you if it is not a fact that the paper which has been marked Exhibit 26 is the paper from which you have been testifying, and which shows the balance of your account in the Butler County State Bank on the 29th of March, 1923?

A. Yes, sir.

(Transcript 167-168.)

H. F. Ferry, recalled as a witness on behalf of the plaintiff, testified in substance as follows:

I have been engaged in the banking business for a good many years. I am generally familiar with the books and records of the bank. The paper which has been marked Exhibit 27 consisting of seven sheets is the register sheet of the personal account of H. F. Ferry, commences December 7th, 1921 and ends March 29th, 1923. The date and the figures over the column New Balance indicates the balance on the date shown indicates the balance I had on deposit in the Butler County State Bank after the date shown.

[fol. 236] Q. Mr. Ferry, I will ask you how much money you had on deposit in the Butler County State Bank, on the 29th day of March, 1923?

Mr. Brewster: To which the defendant, C. L. Harris, executor, objects as being incompetent, irrelevant and immaterial.

Sustained.

Same objection by Mr. Malloy on behalf of defendants King, Ferry and Ewing.

Sustained as to Ewing, overruled as to Ferry and King.

Same objection by Bond, by Woodward, and by McKay as to defendant, E. F. Adams.

Sustained.

A. $1.20.

Mr. Geddes: I offer in evidence, on behalf of the plaintiff Exhibit No. 27, being register sheet of the personal account of H. I. Ferry, in the Butler County State Bank.

Same objection as before.

Same ruling.

Cross-examination by Mr. Malloy:

Q. That is not the only account that you had in the Butler County State Bank, is it, Mr. Ferry?

A. No, sir, I had something in five or six other accounts.

The Court:

Q. Is this your personal account, Mr. Ferry?

A. Yes, sir.

Q. Did you have other personal accounts?

A. No, sir. The records will show that I deposited $100.00 on the 28th day of March.

(Transcript 169-170.)

[fol. 237] A. B. Ewing, recalled as a witness on behalf of the plaintiff:

Direct examination:

Exhibit 28 consisting of six sheets which you hand me is the ledger sheet of the Butler County State Bank. It is my checking account in the bank. It starts December 9th 1921 and ends April 4th, 1923.

Q. How much money did you have on deposit in the Butler County State Bank, April 4th, 1923?

Mr. Brewster: The defendant, C. L. Harris, as executor, objects to this testimony as being incompetent, irrelevant and immaterial.

Sustained.

Mr. Malloy: I object on behalf of the defendants King and Ferry and Ewing?

Overruled.

Mr. Bond: I object on behalf of the defendant L. D. Hadley.

Sustained.

A. I did not have any.

Q. How much money did you have in your checking account in the Butler County State Bank, on the 28th day of March, 1923?

Same objections as above.

Sustained as to all defendants except King, Ferry and Ewing.

A. At the close of business, March 28th?

Q. Yes?

A. $8.47.

Q. Mr. Ewing, I direct your attention to the letter up here, O. D. what does that mean?

A. Over-draft, over-drawn.

Mr. Geddes: The plaintiff now offers in evidence exhibit No. 28.

[fol. 238] Mr. Brewster: The defendant, C. L. Harris, as executor, objects as being incompetent, irrelevant and immaterial.

Sustained.

Mr. Malloy: I object on behalf of the defendants C. L. King, H. F. Ferry and A. B. Ewing?

Overruled.

Mr. Bond: I object on behalf of the defendant Hadley.

Sustained.

The Court: The objections to Exhibit 28 and to the testimony of the witness Ewing, will be sustained as to all the defendants except King, Ferry and Ewing, and will be overruled as to these defendants.

(Transcript 171-172.)

L. D. Hadley, recalled as a witness on behalf of the plaintiff, testified in substance as follows:

I have been engaged in the banking business for a good many years. Exhibit 29 consisting of four sheets is my checking account in the Butler County State Bank, beginning December 12th, 1921 and ending March 27th, 1923.

Q. How much money did you have on deposit in the Butler County State Bank at that time?

Mr. Brewster: The defendant C. L. Harris, as executor, objects to this testimony as being incompetent, irrelevant and immaterial.

Mr. Malloy: Same objection.

Mr. Bond: Same objection.

The Court: The objection is overruled as to the defendants King, Ferry, Ewing and Hadley, and sustained as to the other defendants.

A. $7.99.

[fol. 239] Mr. Geddes: I now offer Exhibit 29 in evidence on behalf of the plaintiff.

Same objections as above.

Same rulings.

(Transcript 173.)

Cross-examination:

I had several treasurer accounts in the Butler County State Bank. I never had an overdraft in the bank in my life.

(Transcript 174.)

Redirect examination:

I was in the employ of the Butler County State Bank up to the time it closed. Exhibit 30 is the checking account of G. W. Lyon defendant in this case. It starts October 4th, 1919 ends February 28th, 1923.

Q. Mr. Hadley, I will ask you to state to the jury how much money was in the checking account of Geo. W. Lyon in the Butler County State Bank, at the close of business on February 28th, 1923?

Mr. Brewster: The defendant, C. L. Harris, as executor objects to this testimony as being incompetent, irrelevant and immaterial.

Mr. Malloy: The defendants King, Ferry and Ewing, object to this testimony for the same reasons.

Sustained.

Mr. Woodward: I make the same objection on behalf of the defendant Geo. W. Lyon, and for the further reason that — proper foundation has been laid.

Overruled.

The Court: The objections are sustained as to all of the defendants except Lyon.

A. $45.23.

Mr. Geddes: I now offer in evidence Exhibit 30.
[fol. 240] Same objections as above.
Same rulings.
(Transcript 174.)

Exhibit 31 consisting of five sheets is the checking account of T. A. Kramer in the Butler County State Bank starting November 5th, 1921 ending March 20th, 1923.

Q. Now, Mr. Hadley, I will ask you to state to the jury how much money as disclosed by that account, the defendant T. A. Kramer had in the Butler County State Bank, on the date you say the account closed?

A. $1,210.69.

Mr. Geddes: I now offer in evidence, on behalf of the plaintiff, Exhibit 31.

Mr. Malloy: To which the defendants, King, Ferry and Ewing object as being incompetent, irrelevant and immaterial.

Sustained.

Mr. Bond: The same objection on behalf of the defendant Hadley.

Sustained.

(Transcript 174-175.)

I testified I had several treasurer accounts in the Butler County State Bank when it closed its doors. I was treasurer of a church, I think it was in two accounts and I had an administrator's account with just a little in it. There was not much in those two accounts, I think something like about $1,400.00.

Exhibit 32 consisting of six sheets is the checking account of E. F. Adams in the Butler County State Bank. This account commenced December 27th, 1921.

Q. Now, directing your attention to the last item on sheet 5, under the head, New Balance, what is the date?

[fol. 241] A. March 6th.

Q. What is the amount opposite the date, March 6th?

Mr. Brewster: The defendant, C. L. Harris, as executor, objects to this testimony as incompetent, irrelevant and immaterial.

Mr. McKay: Mrs. Adams makes the same objection.

A. $1,930.31.

Q. Now, Mr. Hadley, I call your attention to the first item at the top of page 6, under the head, New Balance, and ask you to state what date is shown there?

Mr. Brewster: I would like to have the record show my objection to each of these questions and answers.

Mr. McKay: Mrs. Adams makes the same objection to each question and each answer.

A. March 8, 1923.

Q. I will ask you to state what is the date at the head of the column designated, New Balance, under the figures, 1923, and the amount?

Same objections.

A. $1,830.31.

Mr. Geddes: I now offer in evidence, on behalf of the plaintiff, Exhibit 32.

Mr. Brewster: The defendant C. L. Harris, as executor, objects to Exhibit 32 as being incompetent, irrelevant and immaterial.

Overruled.

Mr. McKay: I make the same objection on behalf of the defendant E. F. Adams.

Overruled.

Mr. Woodward: I make the same objection on behalf of the defendant Geo. W. Lyon.

Overruled.

[fol. 242] Bond: The same objection on behalf of the defendant, L. D. Hadley.

Overruled.

By Mr. Geddes:

Q. Now, Mr. Hadley, you have been connected with the bank a good many years?

A. Yes, sir.

Q. From your knowledege and experience in the bank, I will ask you if it is not a fact that the figures, $1,930.31, opposite the words March 6th, was the balance of Mrs. E. F. Adams in the Butler County State Bank, at that date?

A. Yes, sir.

Q. And if that report does not show that it was the year 1923, can you tell whether that is 1923, or not?

A. Yes, sir, it is March, 1923.

Q. Now, what is the total amount, as disclosed by that account of Mrs. E. F. Adams in the Butler County State Bank, on the 29th day of March, 1923?

Same objections as heretofore.

A. $1,588.28.

The Court: I will sustain the objections to this whole paper, Exhibit 32. It is cut out as to everybody.

Mr. Geddes: To which the plaintiff excepts.

(Transcript 175-177.)

The sheet of the account I have identified as that of T. A. Kramer shows his deposits increased from February 27th, 1923, when he had $791.67 to the close of business on the date the bank closed its doors, when he had $1,210.69.

(Transcript 177-178.)

Mr. Geddes: The plaintiff now offers in evidence, as against the defendant, E. F. Adams, plaintiff's Exhibits [fol. 243] 9, 8, 7 and 12, each being a letter on the stationery of the Butler County State Bank, of El Dorado, Kansas, each bearing the name of E. F. Adams, vice-president, under the title, officers.

Exhibit 9 being a letter dated September 28, 1921, signed by C. L. King.

Exhibit 8 being a letter dated November 15, 1921, signed, C. L. King.

Exhibit 7 being a letter dated August 6, 1921, signed, C. L. King.

Exhibit 12 being a letter dated June 28, 1922, signed, C. L. King.

Mr. McKay: The defendant E. F. Adams, objects to these exhibits and each of them, as incompetent, irrelevant and immaterial; in no way binding upon her; it not having been shown that she knew, or consented that her name appear on the letter head of the Butler County State Bank.

And this defendant objects for the further reason that these exhibits would not prove or tend to prove that she was an officer or director de facto of the Butler County State

Bank at that time; it having affirmatively appeared from the plaintiff's evidence that she was not acting as an officer or director of the Butler County State Bank at that time; and further, that de jure officers had been elected and had qualified.

Objection sustained.

Mr. Geddes: Now, the plaintiff is willing to stipulate that the record may show that on the 5th day of September, 1923, he received guaranty fund certificate 617, which bears date, April 23, 1923.

That he received, on said certificate, on January 18, 1924, the sum of $4,545.23.

[fol. 244] That on December 24, 1925, he received, on the same certificate the sum of $2,272.61.

Making a total of $6,817.84, on the guaranty fund certificate, being for the amount of $22,726.16, bearing interest at six percent from March 30, 1923.

(Transcript 179.)

W. R. Childs, recalled by defendants for further cross examination:

It is true that in addition to the assets I mentioned on the witness stand, as security the C. W. Meredith notes. There is an interest in a producing oil and gas lease in Greenwood County, Kansas. There was an actual offer made for this lease of $3,500.00. Mr. Benson and I investigated it last week. The judge has not yet given his decision on the offer. My judgment is that the proposition be declined.

I also hold certain shares of common and preferred stock in the Emerald Oil Company. I have obtained authority to sell the stock at a price of $1,200.00 and have a buyer, and the proceeds from the sale of the stock and from the interest in the producing oil and gas lease are applicable to the satisfaction of the Meredith notes.

The Phillips Petroleum Company offer the $3,500.00 for the interest in the lease. They are in the operation of the lease and I presume they control it. There is 160 acres in the lease.

The plaintiff rests.

(Transcript 180-181.)

Mr. McKay: The defendant, E. F. Adams, demurs to the plaintiff's evidence, for the reason that the same wholly fails to prove, or tend to prove, any cause of action against her, and in favor of the plaintiff.

Sustained.

[fol. 245] Mr. Woodward: Comes now the defendant, Geo. W. Lyon, and demurs to the evidence on behalf of the plaintiff, for the reason and on the ground that the same wholly fails to prove any cause of action existing in favor of the plaintiff and against said defendant.

Sustained.

Mr. Brewster: The defendant, C. L. Harris, as executor of the estate of T. A. Kramer, deceased, demurs to the evidence offered on behalf of the plaintiff for the reason that the same wholly fails to establish any right of action against the said C. L. Harris as such executor, and in favor of the plaintiff.

Overruled.

Mr. Malloy: The defendants, C. L. King, H. F. Ferry and A. B. Ewing, severally demur to the evidence of the plaintiff for the reason that it fails to establish any claim or demand in favor of the plaintiff, and against these defendants, or any one of them; and particularly, the plaintiff fails to establish that he has not realized his claim in full, under the certificate granted to him by the Banking Department of the State of Kansas, against the bank guaranty fund, and fails to show that he is still the owner and holder thereof, and fails to show that he has not sold the same.

Overruled.

Mr. Bond: The defendant, L. D. Hadley, demurs to the evidence of the plaintiff, for the reason that it does not show any cause of action in favor of the plaintiff and against the defendant, L. D. Hadley; and for the further reason that the plaintiff has failed to show that the defendant Hadley is or was at any time a director of the Butler County State Bank; and for the further reason that the plaintiff has not shown that he is not the owner and holder

[fol. 246] of said certificate of deposit, that he has not received all the money due him under the allegations set out in his petition.

Overruled.

(Transcript 181-182.)

Defendant's Evidence

F. H. Foster, called as a witness on behalf of the defendants, testifies in substance as follows:

Direct examination:

My home is in Fort Scott, I am connected in the Western Exchange National Bank in Kansas City, Missouri, as vice-president. I have been a director in that bank for five or six years. Was formerly State Bank Commissioner of Kansas, from April 1st, 1921 to February 1st, 1923, while bank commissioner I had occasion to an extent to become familiar with the affairs of the Butler County County State Bank. I am acquainted with the signature of Walker E. Wilson, the State Bank Commissioner, who preceded me. Exhibit 33 which you show me bears the signature of Walter E. Wilson.

Mr. Malloy: We offer Exhibit 33 in evidence.

Q. Was Walter E. Wilson your immediate predecessor in office?

A. Yes, sir.

Mr. Geddes: The plaintiff objects to Exhibit 33 as being incompetent, irrelevant and immaterial, not within the issues in this case, and no defense and no part of a defense to the plaintiff's cause of action.

The Court: The jury has already been instructed as to the effect of this evidence, and will be further advised in written instructions with reference to it.

Objection overruled.

[fol. 247] Exhibit 33 read to the jury by Mr. Malloy, being a letter, dated March 31, 1921, by Walter E. Wilson to C. L. King.

(Transcript 183-184.)

I believe there was a report of Mr. Wright one of the examiners of the Butler County State Bank in September, 1921, which included certain requirements and among others a requirement relative to an assessment of fifty per cent of the stock of the bank.

I think Exhibit 34 which you hand me is a carbon copy of a letter which I received from C. L. King, president of the Butler County State Bank, relative to that report.

Exhibit 35 is a letter directed to C. L. King and signed by me.

Mr. Malloy: I offer Exhibit- 34 and 35 in evidence on behalf of the defendants.

I had a meeting with Mr. King and Mr. Frazier at my office in Topeka, after the three letters you show me written by me to Mr. King bear date. I think we discussed the report sent in by Mr. Wright. I don't have any clear distinct recollection of just what occurred. I think I made an examination of prior quarterly reports that had been returned by the Butler County State Bank to the Department.

The requirement to levy and assessment on the stock of the bank was not approved and ordered by me.

Q. After examining the report made by Mr. Wright, and any former quarterly reports that you may have examined, and after discussing the situation with Mr. King and Mr. Frazier, did you have any opinion at that time as to whether or not the Butler County State Bank was solvent or insolvent?

[fol. 248] To which the plaintiff objects as being incompetent, irrelevant and immaterial, being no defense or any part of a defense, to the plaintiff's cause of action.

The Court: The objection is overruled for the reasons heretofore suggested.

A. Well, I presume I did.

Q. You did have an opinion?

A. Yes, sir.

Q. Are you able to state now what your opinion was at that time?

Same objection as above.
Same ruling.

A. Well, I must have arrived at the conclusion that it was not insolvent at that time.

Q. Mr. Foster, at that time, or at about that time, what was the condition in a very large number of the state banks of Kansas, with reference to their having frozen assets in their note cases?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, and no defense to the plaintiff's cause of action.

Overruled.

A. That would be in the fall of 1921?

Q. Yes.

A. Well, there was no question but what there were a large number of banks that had what we term frozen assets.

Mr. Geddes: The plaintiff moves the court to strike out this testimony as being wholly incompetent, irrelevant and immaterial. The condition of frozen assets in any other bank would not be any evidence of the condition of the Butler County State Bank, and would be no defense to this action.

Overruled.

[fol. 249] Q. Was that what was generally termed as a period of deflation, Mr. Foster?

To which the plaintiff objects as being wholly incompetent, irrelevant and immaterial, and no defense to this action.

Overruled.

A. Yes, sir.

Q. You may state, if you are able to do so, Mr. Foster, whether or not, in valuing, in inventorying and valuing, the assets of a bank, as a going concern, a different rule is applied, in classifying paper, from what would be applied if the institution had been closed and placed in the hands of a receiver?

To which the plaintiff objects as being incompetent, irrelevant and immaterial.

Overruled.

A. Well, I don't know that I would term it a different rule, but a different judgment, rather, I would say, as to what might be collected on the assets.

Q. You have had experience, Mr. Foster, in handling the affairs of institutions, after they had been closed.

A. Yes, sir.

Q. You may state whether or not it is much more difficult to realize on the obligations owing to to a bank, after the bank has been closed, than while it is a going concern?

Same objection as above.
Same ruling.

A. It is more difficult.

Q. I will ask you if it is a fact, or whether it is a fact or not that the receiver in charge of a closed banking institution is more inclined to look to the security, or look to tangible property out of which judgment might be realized upon [fol. 250] execution, than to the moral risk on the paper?

Same objection.
Same ruling.

A. Oh, I expect so.

Q. In the classification of paper, in the hands of a going concern, you would classify paper as perfectly good and collectible, where the maker has no tangible assets, but where he has ability to earn and character that will enable him to meet his obligations? Is that true?

A. To a certain extent, yes, sir.

Q. And to some extent, after an institution is closed, these considerations are put to one side, are they not?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, and no defense to this action.

Overruled.

A. Oh, possibly but not altogether.

Q. in other words, Mr. Foster, the inventory of a closed bank, as to the value of the assets, will be more rigid than in a going concern?

Same objection.
Same ruling.

A. Yes, sir, probably so.

Q. Mr. Foster, I will ask you, if the technical rules of banking, as applied under the laws of the State of Kansas, through the banking department, had been applied strictly and literally to the state banking institutions during the years 1921, 1922, and 1923, and more particularly the years 1921 and 1922, would it have had a very marked and widespread effect upon state banking institutions in Kansas?

[fol. 251] To which the plaintiff objects as being wholly incompetent, irrelevant and immaterial, no defense to this action, and speculative.

Sustained.

Q. Did you keep in touch with the affairs of this bank during your administration, Mr. Foster?

A. Yes, sir, as best I could. I tried to. I had eleven hundred other banks, however.

Q. Upon every occasion, when you asked the officers of this bank, or any of them, to come to Topeka, they came and made a full report to you?

To which the plaintiff objects as being wholly incompetent, irrelevant and immaterial.

Overruled.

A. Yes, sir.

Q. They reported to you freely and frequently?

Same objection. Same ruling.
Same ruling.

A. Yes, sir.

Q. Did they, at such times, confer with you as to what your suggestions were, with reference to handling the bank?

Same objection. Same ruling.

A. Yes, sir, to some extent, in a general way.

(Transcript 184-187.)

My administration ended in February, 1925. In addition to their trip to El Dorado I was furnished with reports from time to time on blanks provided for that purpose and

by letters from the officials of this bank as to the progress of the affairs of the bank.

Q. Down to the close of your administration Mr. Foster, in February, 1923, did you at any time reach a determination or an opinion that this bank was insolvent?

[fol. 252] To which the plaintiff objects as being wholly immaterial, irrelevant and incompetent, and no defense to this action.

Overruled.

(Transcript 187-188.)

I think my letters will show that I was very much concerned about the conditions of the bank during that time. But I never had arrived at the conclusion that it was insolvent and ought to be closed under the statute.

I recall early in my administration of asking Mr. Ferry to come to Topeka to see me. I think Mr. Ferry at that time was not an officer of this bank, other than director. I requested Mr. Ferry to take an official position and actively participate in its affairs and he did so.

(Transcript 188.)

Cross-examination:

I don't think during my term as state bank commissioner thtat I came to El Dorado and made any examination of the Butler County State Bank. I had a number of examiners under me examining the state banks in Kansas. When an examiner's report was sent in of an examination of the Butler County State Bank during my term as bank commissioner I think I carefully examined most of them. I know I did some of them. I knew Mr. Wright was one of the examiners during my administration and I believe Mr. Bradley served for a short time.

I examined these reports as they came in as best I could. There was a large number of them. I can't say from recollection whether the requirments of the examiners reports of [fol. 253] the Butler County State Bank with reference to overdrafts, or the excess loans, were ever complied with or not. Of course we followed this up and tried to get them to comply with the requirements. I don't know whether they ever did or not.

I think I saw sheet 11 of Exhibit 18 bearing date of January 21st, 1922. I observed that it showed seventeen excess loans amounting to $1,781,585.69. We followed up that report as best we could to see that that requirement was complied with.

It could not be complied with immediately. Where they had excess loans we did our best to get them to remove them as rapidly as possible.

I cannot say positively whether I saw Exhibit 20 designated examiners report on the condition of the Butler County State Bank, March 8th, 1921, but the inference would be that I looked into all the information I could get regarding the condition of this bank. I probably looked at it but have no recollection now of examining it. I requested Mr. Ferry to go into the Butler County State Bank as an officer of the Butler County State Bank, I felt that Mr. King needed a vigorous assistant in helping him work out this situation, and I knew Mr. Ferry was a director and had been in the bank before and probably possessed more information about the history of the bank and probably could render Mr. King more assistance than anyone else. In my judgment the bank at that time was in a critical condition.

(Transcript 188-190.)

Redirect examination:

I felt that Mr. King needed some assistance, not because of my lack of confidence in Mr. King, but that bank, like lots of other banks, was in a critical condition, there were [fol. 254] a number of frozen assets in all of them, I felt that it needed all the help and energy that we could secure and Mr. Ferry having been in the bank before I knew he must know considerable about its affairs. I did not know of any more available man to go in there so I asked him if he would not go into the bank and help work out the situation. The statute of Kansas provides that there shall not be loaned to any one person, firm or corporation an amount in excess of fifteen percent of the paid in capital and surplus fund. Any loan which exceeds this fifteen percent is an excess loan except under certain conditions where there are certain s-curities for which the statute provides.

Strictly speaking an excess loan refers just to that fifteen percent limit. It is a violation of a statutory provision. I suppose it has no bearing upon the collectibility of the paper.

(Transcript 191.)

LEWIS WILSON, called as a witness on behalf of the defendants, testified in substance as follows:

Direct examination:

I live in Hutchinson, Kansas. I have had about six years experience as an official in banks, state and national, and about six years as an examiner of banks, state and national. I was an examiner in the state banking department during 1913-14 and 15. I became national bank examiner in 1916. Part of Kansas, part of Oklahoma, part of New Mexico and part of Nebraska was my territory.

I later became assistant bank commissioner of the state of Kansas under the administration of Carl Peterson.

[fol. 255] Q. Now, from your experience, Mr. Wilson, as an examiner, a bank examiner, and from your actual experience in the banking business in the state of Kansas, I will ask you to state to the jury what was the condition of the paper in the banks of Kansas, generally, during the years 1921, 1922 and 1923?

To which the plaintiff objects as being incompetent, irrelevant, and immaterial; no defense and no part of a defense to the plaintiff's cause of action; and further, it would be no evidence whatever about the condition of this bank.

Overruled.

A. Well, I would say that the condition, at that time, was very wide-spread, in Kansas, in general, and that it was very unliquid and very much frozen.

Q. Due to what, would you say?

Same objection as above.

Overruled.

A. Well, due to the causes which brought on the deflation period.

Q. Did that condition exist very largely in farming and cattle communities?

Same objection as above.
Overruled.

A. I would say, more than any other, yes, sir.
Q. During those times, were there sharp fluctuations in prices of different commodities?
A. Yes, sir.
Q. Mr. Wilson, did you make an examination of the affairs of this bank, after it was closed?
A. Yes and no. I made an examination of all of the assets and all of the liabilities, and as to their totals, and the various items; but not as to their values.
[fol. 256] Q. During the administration of Mr. Peterson, as state bank commissioner are you able to state about how many banks were closed in Kansas?

To which the plaintiff objects as being wholly incompetent, irrelevant and immaterial; and outside the issues in this case.

Overruled.

A. Well, off-hand, I would say about, probably, fifty.
Q. Did you have to do with the affairs of those closed institutions to a very considerable extent?
A. With all of them to some extent, and in most of them very largely.
Q. As a matter of fact, Mr. Wilson, you were the one with the most banking experience of anybody connected with the state banking department, during that administration, is not that true?

(No answer.)

Q. Mr. Peterson had not been engaged in the banking business before that?
A. Not to my knowledge.
Q. He had been in the building and loan business?
A. Yes, sir.
Q. As assistant state bank commissioner, you had to do very largely with the affairs of these banks?
A. Yes, sir.

Q. Mr. Wilson, what would you say as to the manner in which you would classify the paper in the note case of a going institution; as contrasted with the manner in which you would classify such paper, and the consideration you would give in classifying the paper, in the note case of a closed banking institution?

[fol. 257] To which the plaintiff objects as being wholly incompetent, irrelevant and immaterial, and not within the issues in this case.

Overruled.

Q. Well, in my opinion, based on what I have observed under those conditions, I do not know of any way to compare them. The gap between them is rather large. The fluidity and liquidness of the assets being very much in favor of the going institution.

Q. Have you found, in your experience as a banker and a bank examiner, Mr. Wilson, that many of the makers of the paper in the note case of a closed banking institution take advantage of the fact that the bank is in the hands of a receiver, to default in payment?

To which the plaintiff objects as being incompetent, ir-elevant and immaterial, and no defense, and no part of a defense, to the plaintiff's cause of action.

Overruled.

A. Yes, sir.

Q. Is it, or is it not, a fact, Mr. Wilson, that the receiver, in the inventory and valuation of a note case of a closed banking institution, bases his judgment of the values of such assets very largely upon whether or not the maker of that paper is, or is not, execution proof?

Same objection as above.

(No ruling.)

A. Yes, sir, where there is no obtainable collateral beyond the maker's power to hold.

Q. In your proceedings as a bank examiner, that same rigid rule was not applied to a going concern, was it?

Same objection as above.

Overruled.

[fol. 258] A. No, sir.

Q. You would be governed, in the case of a going institution, to a considerable extent, as to the history of the debtor in the matter of the payment of obligations, and upon information that you would get from the officials of the bank?

To which the plaintiff objects as being wholly incompetent, irrelevant and immaterial, and outside the issues in this case.

Overruled.

A. Yes, sir, if I understand the question correctly.

Q. I mean, the history relating to the experience that the bank had had with the debtor in the payment of his obligations in the past, and not altogether upon whether he had property, or not?

Same objections as above.

Overruled.

A. Yes, sir.

Q. After a bank has been closed, though, and in the hands of a receiver, would you then, in the classification of the paper, as to valuation, give much weight to unsecured paper of that character?

Same objection. Same ruling.

A. Well, yes and no. It would depend a whole lot on the character of the maker of the paper.

Q. Prior to the time that this bank was closed, Mr. Wilson, was there any conversation, that you know of, between the officials of this bank, or any of them, and you and Mr. Peterson, representing the department?

A. Yes, sir.

Q. Was there an occasion when Mr. King and Mr. Frazier had a conversation with you and Mr. Peterson, in the state [fol. 259] bank commissioner's office in Topeka, about a week or two before the bank was closed?

A. Yes, sir.

Q. Were the affairs of the bank discussed, at that time, quite largely?

A. Yes, sir.

Q. Did you hear Mr. Peterson's testimony, on the stand here yesterday?

A. Yes, sir.

Q. Did you hear him make the statement that, at the time, he could not say that, in his opinion, the Butler County State Bank was insolvent?

A. Yes, sir.

Q. Did you hear that statement made by him at Topeka at that conference with Mr. King and Mr. Frazier.

A. I don't know that I heard that statement made by him in Topeka, in that many words. In fact, there was nothing in this conversation, that was stated, that would lead him to make any decision as to whether or not the bank was solvent.

Q. Did Mr. Peterson, in that conversation, give any directions to Mr. King, as to what to do?

A. Yes, sir.

Q. What were they?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, and not within the issues in this case.

Overruled.

A. Well, to the effect that the bank was not—that since the bank was not in a satisfactory condition and had not been for a great period of time—and by the way the past reports were gone over at this meeting; Mr. Peterson stated to Mr. King that it was necessary that the affairs of [fol. 260] the bank be corrected; and that he would expect that they should be; and instructions were given to Mr. King that he should return to El Dorado and run this bank; and correct this condition.

Q. Did you hear Mr. Peterson say to Mr. King, Go home to El Dorado and run your bank, and you will hear from me further, or words to that effect?

Same objection as above.

Overruled.

A. Yes, sir, words to that effect, practically. My memory is that he was told to go home and run the bank, and further attention would be given to it.

Q. Mr. Wilson, did you at any of the examinations that you made personally of the affairs of this bank, or in any of the conversations that you had with Mr. King, or any of

the officials of this bank, or with any member of the department, or from any of the quarterly reports made prior to your encumbency; or during the examinations that you made of the affairs of the bank after it closed; find anything that indicated any fraudulent act or crookedness on the part of any of these defendants?

A. No, none whatever.

The plaintiff objects to the foregoing question, and moves the court to strike out the answer and take it from the consideration of the jury, as being incompetent, irrelevant and immaterial, and not within the issues in this case.

Overruled.

Plaintiff further objects to the question and moves the court to strike out the answer for the reason that the witness has testified that he did nothing further than to list [fol. 261] the assets and liabilities of the bank here, after it closed.

(Last question read to witness.)

A. Well, no, probably nothing in connection with the work here, which I did after the bank closed, had reference to that.

(Transcript 192-196.)

On yesterday I heard the requirement sheets read here on some of the examiner's reports. What you have read from the reports is printed on the report except the figures.

Exhibit 18 dated January 21, 1922, shows that the reserve of the Butler County State Bank, as indicated in the report, was more than the legal requirement by five per cent. I did not hear any reports read yesterday where the reserve was below the legal requirement. According to the report of Mr. Bradley the reserve was above the legal requirement. Cash reserve shortage shown on the report means that the cash reserve on hand in the bank's vaults was short of the legal requirement to the amount of $12,000.00 On that occasion this bank could have had ample deposits in other banks from which it could have drawn exchange and still be short some $12,000.00 in the vault that day.

(Transcript 197-198.)

Cross-examination:

During the administration of Mr. Peterson I was connected with the bank commissioner's office from early in February, 1923, until August 4th, 1925, and during that time made no personal examination of the Butler County State Bank. While I was in the office, under Mr. Peterson, I examined the reports that had been sent in for the pre-[fol. 262] ceding year with reference to the condition of the Butler County State Bank and I made further investigation as to the condition of the Butler County State Bank after I went in under Mr. Peterson. This examination was in connection with the examination that Mr. Warren made. I remember you, Mr. Geddes, being at the state bank commissioner's office after the bank had closed. I don't exactly remember Mr. Jones now. At that time I might have had a judgment of the condition of the Butler County State Bank at all times from March, 1921, down to the time you talked to me. I might have had a judgment as to the condition as the result was—as they were developed at the time that you were there. I can't recall that I expressed that judgment to you, I don't recall telling Mr. Jones and you that the Butler County State Bank was insolvent in March, 1921 and never had been solvent since that day. I will say to the best of my knowledge I did not make that statement. I will say that positively I don't remember making it.

(Transcript 198-199.)

A. H. Stone, called as a witness on behalf of the defendants, testifies in substance as follows:

Direct examination:

I live at Bristow, Oklahoma, am in the investments business, formerly lived at El Dorado, was connected with the Fidelity Refining Company, as president, from January, 1919 to March 14th, 1923. I have heard some of the testimony in this case. The Fidelity Refining Company referred to in this case as one of the borrowers of the Butler County State Bank is the company of which I was president. That company engaged in business in this locality in 1918, which [fol. 263] became a borrower of the Butler County State

Bank in 1918 and continued to be a customer and borrower of that bank until the closing of the bank. It was engaged in refining and producing oil. In that business it acquired an oil and gas lease covering what is known as the Sluss farm in Butler County, Kansas, in 1918. The land is described as lot 6, west one-half (½) of lot 2, section 25, township 26 south, range 5, Butler County, Kansas.

The company acquired the working interest in the lease and the lease was producing oil. As I remember we paid $185,000.00 for it. The money with which to purchase the lease was not borrowed from the Butler County State Bank, it was raised from other sources.

The company continued to own the lease during all the time it was in business here and produced oil from the property. The lease had two wells on it producing around 100 barrels a day. The company had the interest in another 80 acre lease that was a producing property. It paid for the interest it held, $65,500.00 the money to buy that lease was not borrowed from the Butler County State Bank at the time of the purchase. The company built and operated a refinery south of El Dorado.

I have had some experience concerning the value and costs of building such a refinery. We carried it on the books at $280,000.00 that was a fair and reasonable value of the property. The Fidelity Refining Company did not make a practice of securing any of its obligations of the Butler County State Bank until they made a mortgage to the bank.

I know of a company known as The Conservative Oil and Refining Company. We bought oil from them for a while and I sold our entire properties to them for $650,000.00. [fol. 264] The properties sold were the properties I have described and the pipe line connecting the refinery with the lease. $25,000.00 was paid on the purchase, the sale was never fully carried out. That sale was in 1919. The sale was made before we were borrowing from the Butler County State Bank. The Fidelity Refining Company entered into another contract of sale for its properties with the Red Ball Refining Company. The same Red Ball Refining Company that is referred to in some of the evidence this morning. We merged really instead of making a sale. We merged the refinery with the properties which consisted

of a bunch of fil-ing stations in Kansas and two in the State of Oklahoma. We retained our production and pipe line. I think, the value of the property of the Fidelity Refining Company included in that merger was worth $263,000.00.

As a result of that transaction these notes which have been introduced in evidence were executed by the Red Ball Refining Company and endorsed by the Fidelity Refining Company and the merger was consummated. The Red Ball Refining Company is not in possession of the refinery.

Thereafter the Fidelity Refining Company applied for a receivership and a receivership was granted in the federal court and the receivership was awarded the properties of the Fidelity Refining Company, which included the refinery.

I am the receiver appointed March 14, 1922, have been in possession of the properties of the Fidelity Refining Company as receiver since that date. As receiver I made and filed an inventory of the estate of the Fidelity Refining Company in the United States District Court to a degree it was an itemized inventory.

[fol. 265] Exhibit 36 is the inventory of the properties of the Fidelity Refining Company which I made. The figures set forth in the inventory were made by me. They are the actual market value of the property as of the date of the inventory, in my judgment. Page 14 shows the value which I placed on the different property owned by the Fidelity Refining Company.

Mr. McKay: I now offer Exhibit 36 in evidence on behalf of the defendant.

To which the plaintiff objects as being incompetent, irrelevant and immaterial.

Sustained.

On March 14th, 1922, I considered the refinery to be worth $250,000.00. Chemicals on hand $582.93; materials on hand $1,097.64; office furniture $500.00; pipe line $5,000.00; Mossman lease $5,000.00; cash on hand $89.16; oil in tanks on the Sluss $258.00; on the Mossman $105.55. In my judgment at that time the fair market value of the, all of the properties and assets of the Fidelity Refining Company was $342,633.28.

No liabilities of the Fidelity Refining Company were ever created after this report was made. The Fidelity Refining

Company at that time owed just about $300,000.00. We figured the value of the property so we thought there was an equity. On October 25th, 1919 the Fidelity Refining Company executed and delivered to J. B. Adams and C. L. King covering the Sluss lease and the refinery property, it was a first mortgage.

Mr. McKay: The defendants now desire to offer in evidence the record of the mortgage referred to by the witness, recorded in the office of the register of deeds — Butler County, Kansas, mortgage record 127, commencing page 424 (formal identification of record waived.)

[fol. 266] Mortgage read to the jury by Mr. McKay.

The notes issued under that mortgage were the same three notes offered in evidence here this morning.

Exhibit 37 is a letter written by myself to the Butler County State Bank to the attention of Mr. King.

After I became receiver of the Fidelity Refining Company I entered into negotiation for the sale of the refinery to one W. D. Richardson a written contract was entered into. I think the contract is on file in federal court.

Exhibit 38 is an exact photostatic copy of the contract you have just referred to. It is dated August 28th, 1922. This contract relates to the sale, by me as receiver. The contract price stipulated in this document for the refinery was $169,000.00, to be paid in installments. Some of the installments were paid. The first installment was paid. Richardson went into possession of the refinery and operated it until I took it back in the fall of 1924. He was in possession of the refinery and operating it under this contract at the date of the close of the Butler County State Bank, March 30th, 1923. As receiver I operated the Sluss lease. It has produced and I have marketed something over $51,000.00 worth of oil. This money came into my hands. I afterwards sold the lease for $35,000.00. I sold the Mossman lease—the company's equity for $1,375.00. We owned a 35/128th interest since Richardson defaulted in his contract.

I have not sold the refinery property. There has recently been an expensive fire out there. I have a claim pending against the insurance company and we have asked leave

of the court to bring suit for $27,500.00. The refinery was injured by the fire to the extent of $50,000.00.

[fol. 267] Q. In your opinion, Mr. Stone, was there ever a time, between the date when the Fidelity Refining Company first borrowed any money from the Butler County State Bank, down to the date of the closing of that bank, on March 30, 1923, when the Fidelity Refining Company did not own property in excess of the aggregate amount of its obligations?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, not tending to establish any issue in this case; and further that presents no defense to this action.

Overruled.

A. I think they were amply able to pay.

Q. All their obligations?

A. Yes, sir.

(Transcript 200-211.)

A distribution has been made by the federal court in the receivership of the Fidelity Refining Company recently and $20,000.00 has been paid to the Butler County State Bank. Other money will be available for later distribution. The claim of the Butler County State Bank has been established and allowed by the federal court in the amount of $111,000.00 that is a preferred claim against the estates of the Fidelity Refining Company.

Q. Have you been directed to satisfy that claim before paying the claims of the other creditors?

A. I have.

Mr. McKay: For the purposes of the record, we desire to offer the financial statement, which Your Honor examined a moment ago, and which has been marked Exhibit 37, being the statement submitted for the purpose of obtaining a line of credit in the Butler County State Bank, on December 10, 1918.

[fol. 268] To which the plaintiff objects as being incompetent, irrelevant and immaterial; and further that it is too remote in time, being made in the year 1918; and further

that it does not prove, or tend to prove any issue in this case, or establish any defense to this action.

Objection sustained.

(Transcript 211-212.)

Cross-examination:

The Fidelity Refinery located out here, did not belong to the Fidelity Refining Company at the time of its organization. The exact name of the Fidelity Refining Company referred to in these notes is The Fidelity Refining Company. I know of no other Fidelity Refining Company anywhere. There was such a thing as the Fidelity Refining Company of Oklahoma. There is not now. It was a corporation. I was connected with the Fidelity Refining Company of Oklahoma. I was connected with the Fidelity Refining Company which was the maker of these notes to the Butler County State Bank. I suppose I helped organize it, it was the re-organization of the old company. It was the re-organization of the Fidelity Refining Company of Oklahoma, at Sapulpa. We re-organized that company under the corporate name of The Fidelity Refining Company a Kansas corporation. I did not own any interest in the Sluss lease individually at the time it was sold to the Fidelity Refining Company nor prior to that time. At that time I was president, W. H. O'Dell was secretary and treasurer. Mr. O'Dell, myself, H. C. Miller, C. E. Redstien, Charlie Papkin and W. H. Buntling were the directors.

I was in the court room this afternoon and part of yesterday, I heard some of the testimony about the note of H. C. [fol. 269] Miller, over which there is some dispute. That is the same H. C. Miller one of the directors of Fidelity Refining Company.

I heard some of the testimony about the Redstein note. That is the same man who was one of the directors of the Fidelity Refining Company.

There was 40 acres in the Sluss lease. Two wells. The first one drilled in 1918, the second one drilled in 1919. I don't know whether they are pumping now or not.

There was 80 acres in the Mossman lease and one well drilled on it.

I have been receiver of the Fidelity Refining Company since March 14, 1922, practically four years I have been

unable to liquidate the company's affairs. I don't know what the trouble is. It is true that I have not been able to sell the property and pay the creditors.

I sold them on contract but they could not pay for them. I did not get the money. I sold part of the assets and got the money. I held stock in the Red Ball Refining Company after it merged, $90,000.00 worth.

Mr. O'Dell and Mr. Redstein held stock. Mr. C. E. Cooper and Mr. Whittaker held stock. It was a Delaware corporation, organized in 1920. I think it is a fact that the Red Ball Refining Company was incorporated and promoted for the purpose of buying the Fidelity Refining Company and its refinery at El Dorado.

C. E. Cooper was president, C. E. Whittaker was secretary and treasurer of the Red Ball Refining Company. Its capital stock of ten shares of no par value and 10,000 shares of preferred stock, I believe of a value of $100.00 a share, that would be a million dollars. None of that stock was actually [fol. 270] sold. The Red Ball Refining Company had no money in its treasury with which to buy the Fidelity Refining Company assets with the assets of the Red Ball Refining Company.

The Red Ball Refining Company had assets consisting of all of the stock of the Petroleum Products Company or corporation together with all of the stock of the Red Ball Refining Company.

The Petroleum Products Company was a Kansas corporation, lorated at Wichita, Kansas, its officers were C. E. Cooper and C. C. Whittaker. It had a line of filling stations in Kansas, seven in number. One at Belle Plain, one at Anson, one at Lindsborg, one at Corbin, one at McPherson and one at Preston.

The Red Ball Refining Company of which Cooper and Whittaker were president and secretary owned all of the stock of the Petroleum Products Company of which Cooper and Whittaker were president and secretary. The Petroleum Products Company had six filling stations. The Red Ball Refining Company was the holding corporation, it owned the stock of the other corporations.

Anson has a population of about 300, all of these towns were small towns. McPherson was the largest one.

I don't know whether I am drawing a salary as receiver of the Fidelity Refining Company or not. There has been

an allowance of $1,000.00 to me and $1,000.00 for the attorney.

By Mr. Brewster:

Q. In which court is this matter pending, what federal court?

A. In the United States District Court, for the District of Wichita, Kansas.

Q. Judge Pollock's court?

[fol. 271] A. Yes, sir.

The Court:

Q. You say you sold these leases and got $40,000.00 for them?

A. I got $35,000.00 for one, and $1,350.00 for an interest in the other.

Q. And you say you have got some of that money on hand now?

A. We have about half of the money on hand.

Q. Do you know why the court did not distribute a larger amount over here?

A. No, sir, I was not there at the time that the distribution was made.

Q. Do you know of any other application made for participation, preferred to this?

A. No, this is the preferred claim, on these bonds. This is the only preferred claim we have.

Q. You still have the refinery property?

A. Yes, sir.

Q. What can you get for that property?

A. I don't know.

Q. Have you any judgment?

A. I would not like to say, on account of having it for sale.

Witness excused.

(Transcript 212-219.)

L. M. Robinson, called as a witness on behalf of the defendants, testified in substance as follows:

Direct examination:

I reside at El Dorado. I am connected with the Mid Co Packer Company as secretary and treasurer. That corporation was organized in 1918. There was just one Robinson [fol. 272] at the time of the organization. Two brothers became associated with the company and another brother worked for the company. Myself and my brothers were very successful in a similar line of business at Coffeyville, Kansas, some years prior to the organization of this corporation. Just one of the Robinsons was engaged in the concern at Coffeyville in an official capacity. The rest worked for the company. L. T. Robinson was the one connected with the company at Coffeyville.

It was organized in 1908 and still is in operation selling packers. My brother sold out of that company in 1916. Certain patents were owned by L. T. Robinson and others by J. G. Robinson, with reference to this line of business. Additional improvements and inventions have been patented on this process since we organized the company at El Dorado. The capital stock of the Mid Co Packer Company was $150,000.00, something like $75,000.00 was issued, the rest remained in the treasury.

Q. In the scheme of financing the business of this corporation, Mr. Robinson, what was the determination with reference to borrowing money for working capital and plant investment, or selling stock for it?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, and not within the issues of this case.

Overruled.

A. The first intention was to sell stock. That was in 1918; but the government refused to permit the shipment of the machinery, and there was no action taken until 1919. Then, it was the intention of the principal stockholders not to sell stock, but rather, to borrow money.

[fol. 273] Q. Now, Mr. Robinson, the history of this business in the State of Kansas, with reference to the Coffeyville plant, showed an average dividend per year of approximately what per cent?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, presenting no defense to this action, and entirely beyond the issues of this case; and further that it is speculative and remote.

The Court: It is remote and speculative in the highest degree, but the objection will be overruled.

A. It paid 75% on a $100,000.00 investment.

Q. Per year?

A. Yes, sir.

The plaintiff moves the court the last two answers as being incompetent, irrelevant and immaterial; offering no defense to this action, and remote and speculative.

Overruled.

Q. Did you communicate this situation, and this history of the business, to the Butler County State Bank, at the time this corporation was organized and money was borrowed to finance the enterprise?

To which the plaintiff objects as being incompetent, irrelevant and immaterial; not within the issues of this case, and constituting no defense to this action.

Overruled.

A. Yes, sir.

(Transcript 220-222.)

The first time a loan was made by the Butler County State Bank to the Mid Co Packer Company was an amount of something like $5,000.00 that was increased from time to time until the final total was something like $60,000.00.

[fol. 274] We manufactured the packer here. I took charge of the office end of it and financing and selling the produce in 1919 and one of my brothers was in charge of the mechanical end of it and the other brother was under him in that department.

I could only estimate the average output of the plant, I would say around $10,000.00 per month. We were compelled many times to work day and night. The concern did not show a profit all the time. Some months we did. We went into bankruptcy in December, 1923. The plant was operating at all times prior to the closing of the Butler

County State Bank, it was making a profit just part of the time.

The bankruptcy proceeding was an involuntary proceeding. I was appointed state receiver in an attempt to reorganize and I was appointed federal receiver and finally elected trustee in bankruptcy. The application for a receiver in the state court was for the purpose of trying to iron out difficulty between the partners of the plant so operation could continue unmolested. It was internal troubles between the officers. I was appointed state receiver October 3rd and the bankruptcy proceeding was instituted about December 3rd.

I operated the plant while it was in the hands of the bankruptcy court, that was December, 1923, to March, 1924. My result of operations were very profitable. Profits around $4,000.00.

The property was sold by the bankruptcy court. I did not purchase it at that sale. My company later purchased part of it.

My name is signed to Exhibit- 39-40 and 41.

Exhibit 40 is a note dated June 27, 1922, due July 9th, 1922, for the sum of $4,400.00.

[fol. 275] Exhibit 41 is a note dated August 22nd, 1921 due January 10th, 1922, for the sum of $11,530.00.

These notes are still due to the Butler County State Bank.

Q. What is your intention, Mr. Robinson, with reference to these notes?

To which the plaintiff objects as being incompetent, irrelevant and immaterial; not within the issues of this case, and no defense to this action.

Overruled.

A. I am in position to safely say, every dollar will be paid.

The plaintiff moves the court to strike out the answer as a conclusion of the witness, and speculative.

Overruled.

Q. Mr. Robinson, has there been a period, since those notes were executed, when you were unable to pay the installments on them?

A. Well, that is true, but there is an explanation that should be made about some of the notes?

Q. Well, explain them?

To which the plaintiff objects as being incompetent, irrelevant and immaterial, and not within the issues in this case.

Overruled.

A. This Exhibit 41 grew out of an agreement between Mr. Adams and myself whereby we took over another company——

To which the plaintiff objects as being incompetent, irrelevant and immaterial. The plaintiff objects to any conversation with Adams, or any agreement with Adams.

Sustained.

[fol. 276] Q. What is your purpose and intention, Mr. Robinson, as to the method and time for the payment of these notes?

A. Well, I am so situated in my business at the present time that I can see my way clear to pay these notes in the near future.

Q. There is another note here, signed by J. G. Robinson. Is that your brother?

A. It is.

Q. Is he engaged in business now?

A. Yes, sir.

Q. In the same line?

A. Yes, sir.

Q. Where?

A. Blackwell, Oklahoma.

Q. This note is for $1,000.00, dated June 5, 1922, due August 22, 1922. Is that the amount of the note of your brother?

A. I presume it is. I knew nothing about that.

Q. Do you have any knowledge as to whether or not your brother is getting into position to take care of that note, or whether that note will be taken care of?

To which the plaintiff objects for the reason that it calls for the conclusion of the witness.

Overruled.

A. Yes, sir, he should be able to pay that.

The plaintiff moves the court to strike out the answer as stating a conclusion.

Sustained.

Q. Did I ask you whether you knew he was in position now where he would be able to pay it in the near future, or to pay it now?

A. I know that he can't pay it now, but I know he will be able to pay it.

[fol. 277] The plaintiff moves the court to strike out the answer as a conclusion.

Sustained.

Mr. Malloy: We now offer in evidence Exhibits 39, 40 and 41, on behalf of the defendants, being the notes about which the witness L. M. Robinson has testified.

Mr. Geddes: The plaintiff objects to Exhibits 39, 40 and 41, for the reason that they are incompetent, irrelevant and immaterial; wholly beyond the issues in this case, and offering no defense to this action.

Sustained.

(Transcript 222-228.)

The product of the Mid Co Packer Company were packers for shutting off water in oil wells. There was a spread between the cost and the sale price of about 100 per cent. There was invested in the plant and machinery of the company about $140,000.00. The cash market value of the plant and machinery, for sale purposes, during the time the bank held the obligations of the company to the closing of the bank was from $150,000.00 to $200,000.00.

The $4,400.00 note in favor of the bank is my personal note. There is collateral back of it. One hundred per cent collateral consisting of oil well packers. The money was to be paid to the bank and applied on the note. Demand has not been made for the payment of these notes by the receivers of the Butler County State Bank.

(Transcript 229.)

Cross-examination:

There wasn't any exact duty on the $4,400.00 note, it was on conditional sale of packers. I had a note in the Butler

[fol. 278] County State Bank due July 1st, 1922 for $4,400.00 for record only, it was mentioned in the conditional sale of contract. The original note was $5,000.00. I reduced it to $3,800.00 and the interest added made it $4,400.00. That was nearly four years ago and the note with interest remains unpaid. I cannot pay the note today without sacrificing practically everything I have in a business way. I propose to pay these obligations as soon as I have the money.

The company at Coffeyville was the Robinson Packer Company.

The Mid Co Packer Company was sold in the bankruptcy proceeding and the assets have been exhausted. I do not know exactly how much the Mid Co Packer Company still owes the Butler County State Bank. I knew they owed them $60,000.00 and they realized something like 33⅓ per cent.

I am a brother of J. G. Robinson. He lives at Blackwell. He formerly lived in El Dorado. The Mid Co Packer first went into the state of receivership in October, 1923.

(Transcript 230,232.)

Mr. Lewis Wilson, recalled on behalf of the defendants:

Direct examination by Mr. Malloy:

Q. Mr. Wilson, after the state banking department took charge of the affairs of the Butler County State Bank, was there any restriction placed by the department on the sale of the bank building here, the building belonging to that bank?

To which the plaintiff objects as being incompetent, irrelevant and immaterial.

Overruled.

[fol. 279] A. Yes, sir.

Q. What was it?

A. Instructions were given by the department to the receiver of the Butler County State Bank that the building would not be sold for less than $75,000.00.

The plaintiff moves the court to strike out the answer as being incompetent, irrelevant and immaterial, and not without the issues of this case.

Overruled.

Q. Are you familiar with the fact, Mr. Wilson, as to whether or not there were any offers made for the building, while you were there with the department?

A. Yes, sir, I am familiar with the fact that there was an offer made from one source, at least.

Q. Do you know what the amount of that offer was?

To which the plaintiff objects as being incompetent, irrelevant and immaterial.

Overruled.

A. At that time, I knew. At this time, I would not be positive that I remember exactly the amount, but I think I do.

Q. What is your best recollection as to the amount of the offer that you were advised of?

To which the plaintiff objects as being incompetent, irrelevant and immaterial.

Overruled.

A. $40,000.00.

Q. Do you know what direction was given by the department with reference to that offer?

To which the plaintiff objects as being incompetent, irrelevant and immaterial.

Overruled.

A. It was refused.

[fol. 280] Q. Now, Mr. Wilson, do you know of any other offer in excess of that sum?

To which the plaintiff objects as being incompetent, irrelevant and immaterial.

Overruled.

A. Yes, sir.

Q. How much, according to your best recollection, was that offer?

Same objection.

Overruled.

A. What I have in mind now was not exactly an offer, but——

Objection renewed.

Sustained.

Q. Did you have an enquiry from prospective purchasers, to ascertain whether or not fifty thousand dollars would be an acceptable offer?

Same objection.
Overruled.

A. We did.
Q. What reply did you make to that?

Same objection.
Overruled.

A. It was refused.

Witness excused.

(Transcript 233-234.)

Mr. McKay: The defendants now offer in evidence Exhibit 42, being chattel mortgage executed by C. W. Meredith Contracting Company, to the Butler County State Bank.

Also, Exhibit 43, being mortgage from the same parties to the same parties, filed January 20th, 1923.

(Transcript 233-234.)

[fol. 281] George J. Benson, called as a witness on behalf of the defendants, testified in substance as follows:

I am one of the district judges in this district. I did some work for the Butler County State Bank as an attorney. Was a member of the firm of Kramer and Benson. The firm for a number of years down to the closing of the Butler County State Bank was attorneys for the Butler County State Bank.

I have seen Exhibit 42 about the date that it bears, October 16, 1922. I prepared that instrument. The description of the property set out in the instrument was procured from my personal inspection of the property at Florence and Waco and here in El Dorado. There is a small amount of property in the mortgage that I did not personally see. But they are comparatively few in number.

The equipment described in Exhibit 42 was then in existence and in the possession of the Meredith Contracting Company.

T. A. Kramer left El Dorado July 16th, 1922. He never returned. His body was brought here after his death in July, 1923.

(Transcript 235-237.)

C. L. KING, called as a witness on behalf of the defendants, testified in substance as follows:

I was president of the Butler County State Bank since its organization. Mr. Adams was chairman of the board of directors and a vice-president. Mr. Adams had charge of the note case and the making of the loan up to the time of his death.

I heard the testimony with reference to the loans extended to the Meredith Contracting Company, to Meredith per- [fol. 282] sonally, the Fidelity Refining Company, the Red Ball Refining Company, the Mid Co Packer Company, the Robinson Brothers, the Artz loan. These loans were made by Mr. Adams.

I recall the occasion of the death of J. B. Adams. An examination of the bank had been completed that evening by Mr. Bradley. I talked with Mr. Bradley after learning that Mr. Adams could not live through the night. I said Mr. Bradley I have just returned from the hospital and Dr. Preston tells me that Mr. Adams will die before morning, what shall I do with the bank? He said open the bank and run it, that is the only thing for you to do. I said I am just a little afraid of a run on the bank. I did open the bank. Mr. Bradley left on the early morning train.

I said to Mr. Bradley if Mr. Adams dies tonight I would hate to open the bank in the morning, I would like to keep it closed out of respect to him. He said tomorrow is Saturday, the next day is Sunday and the next day is Monday and you will probably want to bury Mr. Adams on Monday and you will want to close the bank that day.

Mr. Bradley requested me before he left to report to the department once a month, to send them a statement as to the conditions of the bank. Mr. Bradley was back in El Dorado about a week or two after that he came into the bank looked at the cash book and said well you are going to make it all right. That is the last I saw of him.

I had some correspondence with Walter Wilson, bank commissioner, about the bank. The first conversation I had with Mr. Foster about the affairs of the Butler County State Bank was in his office at Topeka after the examination by Mr. Wright. I refer to the examination in September, 1921. [fol. 283] I heard Mr. Wright's testimony about the signing of the requirement sheet. Mr. Wright took about two or three days in making the examination. He finished one evening and said I will write up the requirements in the morning. He came down to the bank to my office and said I have finished my requirements, I wish you would sign it, I want to catch this train, it leaves in a few minutes. I am leaving you a copy.

I signed it without reading it and Mr. Ferry signed it. I don't know that I ever did read the requirement sheet. Mr. Kramer was one of the directors and Wright asked me to have Kramer come down to sign it. I said he is on his road down. He said if Mr. Kramer comes in have him come down to the train and sign it. Kramer came in and I said to Kramer if you will hurry to the depot you can get there in time to sign it, and he did so.

Ferry and I opened up the copy and read it. I knew what was in the requirement sheet before Mr. Wright left town. There was a recommendation or request that we call a meeting of the stockholders for the purpose of levying an assessment of fifty per cent on the stock. When I noticed that requirement I wrote to Mr. Foster and asked to defer calling the stockholders together until I could consult with Mr. Frazier. He was the brother of Mrs. Adams, the wife of J. B. Adams, and was looking after her affairs. I discussed the matter with Mr. Foster at Topeka and he said I will withdraw the assessment and whenever an assessment is made on your bank I will make it. He said Mr. King go back home and run the bank and continue to report to this office from month to month. I did so. I kept the depart- [fol. 284] ment in touch with the condition of the bank. I later talked with Mr. Foster here in El Dorado on three or four different times, when he was visiting here, about the affairs of the bank.

The Meredith Contracting Company was in the business of grading, ditching, paving, hauling and oil field work. As they obtained contracts they would assign them to the

bank; these were ordinary forms of contractors' contracts, providing for installment payments on estimates. The assignments were always drawn by our attorney Mr. Kramer, and in his absence, Mr. Benson.

Bye was engaged in the paving business, bridge building and road building. He took contracts on installment payments and these contracts were assigned to the bank.

The Meredith Company and Bye were active going concerns until after the bank was closed.

The Mid Co Packer Company and the Robinsons lines were actively engaged as going concerns.

Sockolow used to run a pipe yard here and sell oil field supplies, pipe and casing.

I do not know whether the Fidelity Refining Company was running at the time the bank closed or not. The Red Ball Refining Company was the successor to the Fidelity Refining Company, in name.

Andrews was engaged in the stock business and farming. He formerly lived here. He continued in that business until after the bank closed.

Mr. Artz is a farmer and stockman.

I paid attention to these various lines of credit and security from the time Mr. Adams died until the bank closed. I always believed that we could collect most of them, some [fol. 285] of them I thought we would have a loss on—on Meredith, for example. I did not think we would have such a loss as would create an insolvent condition of the bank. I always believed the bank was solvent. I realized it would take a considerable period of time for the bank as a going concern to work out the various lines of credit. The closing of the bank had an effect on the collectibility of the paper.

As to my owing the bank there are some matters of adjustment to be made between the receiver or the department and myself. There are certain adjustments to be made which never have been made.

I paid some obligations of the bank and expended some money in trips to aid the receiver after the bank closed. I wouldn't say a great amount. At the request of the department I took charge of the Meredith contract with the Santa Fe Railroad and superintended that for five months. The officers of the bank drew their last month's salary prior to the closing of the bank. They were all turned back by

request of Mr. Lewis Wilson. I turned mine back, I am satisfied Mr. Ferry and Mr. Hadley did theirs.

I explained the Meredith overdrafts to the banking department. The estimates were not sufficient to take care of the payroll and we carried them on an overdraft rather than increase the note. Mr. Foster made no objection. I thought if the contracts were finished there would be a considerable profit which could be applied on the indebtedness to the bank. The Santa Fe contract covered a mile or so of high grade.

During the two years after the death of Mr. Adams the Meredith Contracting Company had two pipe line contracts in Greenwood County, one job in Wichita and the finishing of a job at Florence. They had lots of trouble with their [fol. 286] South Lawrence paving job; they lost a lot of money, on that job. I think because they took the contract too low.

After the closing of the Butler County State Bank I had a converstion with Mr. Ramsey at his office. Mr. Ramsey phoned me in the morning and told me he wanted to see me. I said all right I will be down there. And when I went to the hotel at noon for lunch I went across to Ramsey's office and the door was locked up.

I went back to the bank and was busy all afternoon in conference with Mr. Peterson and Mr. Carpenter. In the evening as I was getting ready to go home Mr. Ramsey called me again and said I am waiting for you.

I commenced telling Mr. Ramsey and Mr. Lloyd about the closing of the bank. I don't remember just the conversation but I was defending myself. Mr. Ramsey said Charlie you needn't tell me anything about it. Everybody in town knows who is responsible for the bank, nobody blames you.

The next conversation I had with Mr. Ramsey, he called at my house that evening and said I have just learned that Frank Case is going over town making certain remarks and telling the people that Nat Frazier did not know anything about the condition of your bank and that if he had known the condition of the bank they would have closed it long ago—such statements will not help you any and you had better see Nat and stop that. I said all right.

This suit was brought several months after that conversation. Prior to the filing of the suit I did not have any

further conversation with Mr. Ramsey about it. The first I knew about the suit was when I read it in the papers. [fol. 287] After the examination made by Harrey Warren in February, 1923, Mr. Frazier and I went to Topeka and discussed the report with Mr. Peterson. This confidential report which has been introduced in evidence was not shown to me by Mr. Peterson. We went over the condition of the bank thoroughly. Mr. Peterson made mention of a number of things that were in the confidential report but he never showed it to me. After our conversation Mr. Peterson said you go back and run your bank until you hear from me. I think all the directors of the Butler County State Bank except the Kramer estate paid the double assessment.

(Transcript 238-250.)

Cross-examination:

I had a conversation with Mr. Bradley the night of the death of Mr. Adams. I wanted to close the bank out of respect to Mr. Adams, that was the only reason. I was in a conference that night with some of the other bankers of this town. I could not say whether Mr. Ferry was there or not. We discussed the condition of the Butler County State Bank in a general way, at that conference. I knew at that time what the condition of the Butler County State Bank was. I was there from day to day until the bank closed. I sent monthly statements to the bank commissioner and frequently wrote him and furnished him all the information I had as to the condition of the bank.

When the examiner came from time to time I discussed the condition of the bank, went over the notes, discussed the nature of the security and we would do that at every examination. I knew all the time what was the condition [fol. 288] of the Butler County State Bank, at the time it closed I think I know all there was to know about those conditions.

I think the South Lawrence paving job was taken in 1921. It lost a considerable sum of money. As a result of the completion of that job our bank got nothing to apply on the indebtedness of the Meredith Contracting Company. The indebtedness was increased instead of diminished.

I recall the time Mr. Warren examined the bank in 1923. I don't think there were any negotiations under way to refinance or reorganize the bank before he came down. There was immediately afterwards. I don't know what happened when Mr. Warren was here that started these negotiations; I suppose we wanted to get rid of the bank. I was a stockholder and I participated in these negotiations one time, was in a conference in the bank building. Mr. Robert Campbell of Wichita, Mr. Craig of Wichita, and Mr. Davis of Wichita, Mr. Ferry, myself and I think Mr. Quinn were there. That was after this examination, I did not know at that time that unless the bank was refinanced or sold that it would be closed by the bank commissioner.

Mr. Warren came back in about a week or ten days. I looked over the books and I would talk about the condition of the bank. Nothing was said about how long the bank would be kept open.

Mr. Bradley made an examination of the bank.

I was not interested in the Meredith Construction Company. I sold some mules to Meredith. It was during the time they were working in the oil fields for the Empire. I do not know just when it was. It was while they were indebted to the Butler County State Bank. I think I sold [fol. 289] them fifteen or twenty mules. They paid me by check on the Butler County State Bank. I wouldn't say they had an overdraft at that time. You can look at the records and see. I think the records will show that at that time they owed us less than $100,000.00. I have given a general report of the conversation with Mr. Ramsey. I told him we were going to try to reorganize the bank.

(Transcript 251-255.)

Redirect examination:

At the time the principal amount of the loans were made to the Meredith Construction Company they had a general contract to do the trucking for the Empire Gas & Fuel Company. This money was borrowed principally by them to buy equipment, trucks, machinery, etc., to enable them to handle the contract.

(Transcript 255.)

Recross-examination:

The Butler County State Bank loaned the money to buy part of their trucks and equipment and they continued to be borrowers right on down until the bank closed.

(Transcript 255.)

Redirect examination:

Mr. Adams made the original loan to the Meredith Contracting people.

(Transcript 255.)

Recross-examination:

Their notes that were not paid off were renewed and in some instances the interest was not paid when renewed.

(Transcript 256.)

[fol. 290] H. F. FERRY, called as a witness on behalf of the defendants, testifies in substance as follows:

At the time of the closing of the Butler County State Bank I was the vice-president, cashier and a director of the bank. I was assistant cashier in 1909. In 1917 I left the bank and was not actively engaged with the bank other than as vice-president and director until the first of January, 1922. I resumed my connection with the Butler County State Bank at the solicitation of F. H. Foster, state bank commissioner. I went to Topeka at his request and he asked me to go in and help Mr. King as an official of the bank. Mr. Ewing who was connected with the bank wanted to be relieved the first of January and Foster asked me to go in as cashier and help Mr. King.

Mr. Ewing was relieved as cashier in January, 1922 and I was appointed cashier by the directors. It was my duty to relieve Mr. King of the details inside of the bank, to look after the cages, the tellers and other matters handled by the men in the different cages of the bank. I had under my supervision the safety deposit vaults, the bookkeping department and Mr. King was left free to look after the note case.

These large lines of credit about which Mr. King was questioned were established prior to the death of Mr. Adams. After I returned to the bank in 1922 I examined into its affairs from time to time to the best of my ability. From the time of the death of Mr. Adams down to the closing of the bank I never entertained an idea that the bank was insolvent. I was positive at all times the bank would work out. I expected it to sustain some losses, the principal loss to be in the Meredith line. I was positively convinced that we could work the institution out.

[fol. 291] The closing of the bank had an effect upon the collection of these lines of credit.

(Transcript 257-259.)

Cross-examination:

There were some lines of credit that there was possibly a question whether we would have a loss or not. It might take several years, possibly, to work it out. They were contracting firms and different concerns and they had been having an uphill pull on account of the conditions in the country and deflation. They had losses prior to the death of Mr. Adams. I did not have to go back into the bank as cashier I felt that it could be worked out and I wanted to help work it out and at Foster's request I went back.

I knew what its condition was. I had the same opinion at the time Mr. Ramsey was making these deposits. To the best of my ability I knew all there was to know about the condition of that bank.

(Transcript 259-260.)

A. B. Ewing, called as a witness on behalf of the defendants, testified in substance as follows:

Was cashier of the Butler County State Bank from 1917 until December, 1922, then became postmaster. Was a director of the bank up till it closed. I kept in touch with its affairs and examined into the affairs of the bank. I never felt that it was insolvent. I thought there would be some loss in the Meredith line but I thought it would eventually work out. I did not think the loss would be such as to render the bank insolvent.

(Transcript 261.)

[fol. 292] Cross-examination:

I have been in the banking business sixteen years. I ran a bank at Potwin, Kansas, and was connected with the Farmers & Merchants Bank in this city. Was with the Butler County State Bank about four years, from 1917 until I became postmaster, I was the cashier and actively engaged there every day. During that time I knew the conditions of the bank. After I became postmaster I attended the directors meeting and we discussed the conditions of the bank. At those times we examined the books and securities of the bank. I knew what the conditions of the bank was down to the time it closed.

(Transcript 262.)

L. D. Hadley, called as a witness on behalf of the defendants, testifies in substance as follows:

I have lived in El Dorado and near here almost forty years. Was four years register of deeds and two years county treasurer. I first became connected with the Butler County State Bank about March, 1914, at the request of Mr. Adams. I worked as a general helper and kept books, later on I was designated assistant cashier. I was the assistant cashier and teller of that bank at the time of the bank's closing. I have been mentioned in connection with this case as a director of the bank.

Q. You may state under what circumstances, you were asked to become a director of this bank?

A. Mr. Adams asked me to——

To which the plaintiff objects, and moves the court to strike out the answer as being incompetent, irrelevant and immaterial, and no defense to this action.

Sustained.

[fol. 293] Q. Mr. Hadley, will you state to the court and jury whether or not you ever became the owner of any stock in the Butler County State Bank?

A. No, sir; I never did.

To which the plaintiff objects, and moves the court to strike out the answer, as being incompetent, irrelevant and immaterial, and not the best evidence.

Sustained.

Mr. Bond: The defendant, L. D. Hadley, now offers to prove that he was not the owner, in good faith, in his own name, of any stock at any time, in the Butler County State Bank.

To which the plaintiff objects as being incompetent, irrelevant and immaterial, not the best evidence, and further, that under the pleadings in this case, the defendant is estopped; and further, that it is no defense to this action.

Sustained (Transcript 263-264).

During all the time that I was connected with the bank I was, as best I could, acquainted with the conditions of the business I had to do with. I met Mr. Bradley when he was examining the bank; I saw him the evening of March 10th, 1921. I had a conversation with him after the news come that Mr. Adams was not expected to live. I told him about Mr. Adams. He said what Adams. I said the one that worked in the bank. He said you don't say, what made him do it. I said probably your report of the slow paper. He said why no man ought to do anything like that on that. They had slow paper there possibly I could have asked him to charge it out. But I gave him all the time they wanted to work it out. There was no reason why they should not do it.

[fol. 294] I walked to the bank with Mr. Bradley and went into the building and heard a conversation between Mr. Bradley and Mr. King. I did not hear all the conversation. I heard Mr. King ask Mr. Bradley what he thought was the best thing to do if Mr. Adams should pass away in the night. Bradley said by all means open up the bank in the morning, just as though nothing had happened, tomorrow is Saturday, the next day is Sunday and the next day Monday. The bank would be closed—guessing that the funeral would be on Monday—and by Tuesday I don't think you will be bothered.

As the bank was examined from time to time I talked with the examiners and the officers of the bank, I talked with Mr. Wright and heard him discuss the note case as he went over it. The questionable or slow paper was discussed.

He brought the requirement sheet in for me to sign. I signed it back of my cage. He said he was in a hurry. I had nothing to do with the note case. I have talked with the

officers of the bank about the condition of the note case and the note.

I would have different talks with Mr. King and Mr. Ferry and the other officers of the bank. I made no loans on behalf of the bank except a $75.00 loan.

I had a conversation with Mr. Ferry after seeing Mr. Bradley's report of the slow paper. I told Mr. Ferry I would like to have an understanding about what was going to be done about this slow paper and that it seemed like this slow paper ought to be moving faster. Mr. Ferry said he was in condition at any time to clean the bank up and would do it whenever the proper time came.

[fol. 295] I had no reason to have any fears not having any financial interest in the bank. I did not press the matter, I was confident they had the matter in hand and knew what to do.

Up to the time of the closing of the bank, the result of my judgment and investigation was that the condition of the bank was not dangerous. I believed eventually the bank would be placed on a sound basis. That the slow paper would be gradually worked out.

I never heard anything about a meeting in the bank at which a reorganization was discussed until it was mentioned here. I first learned the bank was to be closed on the morning it was closed.

(Transcript 264-268.)

Cross-examination:

The conversation I have testified about with Mr. Ferry about the condition of the bank was after he came back into the bank. After he came back in January, 1922, it was some time after that. As far as I could do I had made an examination of the books and securities of the Butler County State Bank and it was after this examination that I talked with Mr. Ferry. I talked with Mr. Ferry because I figured they would want to settle up the Adams estate. I offered to turn back my stock to them. They said when we get to it we will take care of it.

If there was any slow paper there I thought it was time to have it straightened up. The real reason why I had this conversation with Mr. Ferry was on account of the slow paper in the bank.

I had a conversation with Mr. King in the later part of 1922 in Mr. King's private office at the bank I talked with him of the conditions of the bank to a certain extent. I had [fol. 296] tried to keep in touch with the condition of the bank. I sought that conference with Mr. King because I thought every dollar that could be made should be applied on whatever slow paper we had in the bank.

The conversation came up about an increase of salary. I said I didn't think there ought to be any increase in salaries, I thought every dollar ought to be applied on the slow paper. Mr. Ferry's salary had just been increased and it had been increased before that. I think that was in the latter part of the year 1922.

I recall the examination of the Butler County State Bank made by Mr. Harry Warren, I was there and Mr. King and Mr. Ferry were there. I don't think Mr. Ewing was there. I remember of Mr. Warren coming back sometime after he made the examination, that was between the February examination and the date of the closing.

(Transcript 268-271.)

C. L. KING, recalled as a witness in behalf of the defendants, testifies in substance as follows:

Direct examination:

The evening before we closed I noticed one of the customers of the bank present a check to the window and quite an amount of currency was counted out to him and the customer went into the safety deposit vault. The teller said he is drawing out all of his account. Mr. Ferry came to me after the closing of the bank that evening and said he had noticed another customer doing the same thing. The next morning I had a conversation with Mr. Ferry, I was afraid [fol. 297] to open the bank. I am afraid there will be a run. He said if there is a run we will have to close the bank. I asked him if it would not be the thing to do to send for Mr. Warren and have him close the bank and he said just as you say. I said I think that is the thing to do. Ferry called Mr. Warren. He came to the bank and he said, Well you want me to close the bank, do you? I said

I think it is the thing to do. He said you are closing it not me. I went with Harry back to the stenographer's room and he dictated the notices.

(Transcript, 272.)

Cross-examination:

On the 28th day of March, 1923, when the El Dorado National Bank attempted to make their clearance with the Butler County State Bank they requested the clearance in money.

I told them I would not do it. The El Dorado National Bank brought suit against the Butler County State Bank over that matter.

If I had a conversation with C. C. Sheldon a short time before the bank closed in which he asked me to tell him the condition of the bank I have no recollection of it. I will tell the jury that to the best of my knowledge and belief he never did.

(Transcript, 272-273.)

Redirect examination:

This El Dorado National Bank suit was five or six months after the bank was closed. The clearance that day was made in the customary way. I don't know anything about the suit. On that day they did not demand cash but Mr. Bradford asked me to pay him in cash and I told him I would not do it.

(Transcript, 273.)

[fol. 298] Mr. Brewster: The defendant, C. L. Harris, as executor of the estate of T. L. Kramer, deceased, now offers in evidence the deposition of Dr. Henry Melville Chase.

To the following question of said deposition, the plaintiff offers the following objection:

Q. State what you found his condition to be.

To which the plaintiff objects as being incompetent, irrelevant and immaterial, not within the issues of this case, and no defense to this action.

Overruled.

Mr. Geddes: May it be understood that all of this deposition is objected to?

The Court: Yes.

The deposition of Dr. Henry Melville Chase is read to the jury by Mr. Brewster, as follows:

(Transcript, 275.)

Dr. Henry Melville Chase, called as a witness on behalf of the defendant, C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, testifies by deposition, in substance, as follows:

Direct examination:

My profession is that of a physician and surgeon in Boston, Massachusetts. Have been practicing in that state twenty-three years. Was educated at Dartmouth College, Harvard Medical School and various hospital appointments in Boston.

Q. Did you ever have under your professional care the late T. A. Kramer of El Dorado, Kansas?

Mr. Stone: Plaintiff objects to that question on the ground that it is immaterial, incompetent and irrelevant and asks, [fol. 299] if counsel for Harris executor, will agree that there be now noted plaintiff's objection to all evidence or questions bearing on the health and physical condition of the deceased T. A. Kramer, any operations performed on him, and all evidence tending to support the allegations in paragraph 5 of the separate answer of the defendant, Harris, executor, on the ground that all such evidence is immaterial, incompetent and irrelevant, it to be agreed that these objections may be taken as made to all questions in relation to any such evidence without particular repetition of the objection to each question, and that such objections may be raised at the reading of this deposition to any evidence contained therein.

Mr. Kramer: I will agree that it is understood that objection is made to all such evidence on the ground that it is incompetent, irrelevant, and immaterial, without specially noting that objection to each particular question.

I had the later T. A. Kramer under my professional care, first treating him about August 18, 1922. I made an examination of him at that time and found him suffering from acute internal obstruction. I operated upon Mr. Kramer to remove the obstruction, to allow the fecal matter to go through the bowel, which it was impossible to do at that time, owing to his poor condition. No more prolonged operation was possible, and the contents of the bowel were drained. I opened the abdominal cavity to unlock the obstruction. The obstruction at that time could not be removed, and the bowel had to be drained. The bowel was in a condition of massive adhesion, which were impossible to separate, and immediate drainage was the only possible solution. After the operation it was necessary for a period [fol. 300] of two or three weeks, for the bowel to drain through this wound. Then I made another incision to separate the original obstruction. It was never possible to remove all of the obstruction. He was under my care from the middle of August to the last of October, 1922. The incision made for the first operation had never healed. At the time I made the first operation the bowel was a mass of adhesions with a thin area of ulceration through which fecal matter drained. There was a tiny pin hole in the bowel at that time about half an inch in diameter. The drainage was inserted in that opening, and the opening never healed. I treated him at the Commonwealth Hospital, Boston, Massachusetts.

He had a day nurse and a night nurse practically all the time; a few days at the end, a single nurse.

He did not seem to be very strong when I first met him. That was the time of the acute obstruction. It had been several hours and material had backed up in the bowel and he was prostrated by it. He was undergoing severe pains and vomiting. The pain was constant from the time the obstruction occurred until relief could be given by inserting the tube. The first operative wound, with the tube inserted in the bowel to drain off the bowel material remained in place about ten days, the length of the incision having been sutured throughout with the exception of the inserted tube area. The wound needed frequent daily dressing.

After the drainage tube was removed a rubber catheter was inserted to give nourishment below the point of drain-

age. It was an open granular wound, the wound requiring constant dressing by the nurses to keep it as clean as possible. Then, after the cocaine operation, which succeeded in removing the real obstruction, a catheter was inserted [fol. 301] into the wound opening into the bowel to feed nourishment and digestants. He was confined to his bed almost all the time between the middle of August and the last of October, 1922, being up in his room for a week or ten days previous to going home, and going out around the hospital for three or four days previous to going home.

He had been operated on previous to the time I had seen him, I think three or four times. It seems I was the fourth or fifth operator; that he had a condition of chronic obstruction of the bowels; the bowels coiled back and forth and stuck together, from which he had trouble of constipation previous to my seeing him. That impairs both health and mental judgment. I don't know anything about his mental keenness for one or two years preceding, but if he was observed to be failing in the handling of his business the chronic obstruction process would be a feature. While he was under my care he was slowed up mentally, because of the period of obstruction and absorption from the wound. While he was under my care there was a very short portion of the time when he was not under pain. There was always discomfort.

About the last ten days he walked around the room and the hospital corridor, and the last three or four days stepped out around the hospital grounds, always with a companion. When he went to St. Louis he went with Miss McKenzie, a nurse, and two brothers.

When I first saw him his condition was extremely serious. It was a matter of life and death. The operation I performed was a very difficult one. It involved procedure upon a man in prostration, one with complete obstruction for several hours, and partial obstruction for several days. [fol. 302] While he was under my care he ate very little immediately after the operation, and it came through the wound opening, undigested. Then his feeding for three or four weeks was through a tube below the point of the opening, and practically nothing by mouth. He was never able to handle only light food; easily digested food, nothing very solid or substantial, for strength. One brother was

with him almost constantly through his sickness. While he was under my care, practically none of the time was he able to transact ordinary business affairs. I should have objected to any business coming to him. He was an awfully sick man.

Cross-examination:

He was very sick, very little strength any of the time. He was just able to get up and go home. He had been better the last quarter of the time. During the period he was here I saw him from one to four times a day The last part of the time I saw him daily once or twice. The visits varied from ten to fifteen minutes to half an hour. I stayed with him quite a lot and talked to him. We had very pleasant conversations. He was slow in his thought and expression. He talked about his family and many general things of life; told me about people he had done things for in his town, and talked some about my work and what I did for people. He told me about his family, about their blood and family relations.

The adhesions of the bowels come by the adhering together of the outside of the tube to other outside matter. The outside of the hose sticks together. It is not the tube itself that adheres to the opposite side. It was not a case where the inside of the hose stuck together. The inside was obstructed because the outside had stuck to-
[fol. 303] gether, making a mechanical kink. My operation was the opening of the outer wall of the abdomen, endeavoring to get the tube free, so that the facal matter would pass through the bowels. At the time he left four-fifths or five-sixths was passing through the bowels, the balance through the wound.

I got his medical history from his brother and from the doctor who had seen him in the acute stage, and from him.

When he went away from here I told him it would happen again. He understood it was dangerous. I made complete notes. They are in the office of Dr. Tenney, who is in Europe. I do not have the notes, and they are not accessible to me. My testimony is based on my memory.

He appeared to be a naturally intelligent man, of education and cultivation, and showed appreciation of the responsibilities of business affairs and life. I would not

doubt but that he was a man of sufficient character and intelligence that he understood the office of director of the bank was one that involved certain responsibility.

I think throughout the whole thing he was too sick to think of what he should get out of and what not to.

I received a letter from him after he left. When he went out about the grounds he was sick. The companion with him was a precaution.

The evidence here was mostly of fatigue, a condition from the obstruction. I never saw him after October, 1922. I have the letter here he wrote me.

Redirect examination:

I do not know who dictated the letter to me. No one has talked to me about my testimony previous to going on the stand.

[fol. 304] Dr. William S. Wyatt, called as a witness on behalf of C. L. Harris, executor, testified in substance as follows:

I live at St. Louis, Missouri. My profession is that of a physician. I practice in St. Louis and east St. Louis, and have been since 1887. I am a graduate of the University of Louisville, Kentucky, and have been practicing in east St. Louis since 1914.

I first met T. A. Kramer, November 4, 1922, at the home of his brother, R. J. Kramer, in east St. Louis.

I was called there to attend T. A. Kramer. He came to us after two operations in Boston. He had an opening in the small intestine, high up. The contents of the bowel and food were coming out of the opening, and he was in constant pain. The flesh was raw over the surface of the abdomen. This required dressing night and day, which practically gave him no time for rest. He was actually starving to death. We operated on him on December 20, 1922.

Mr. Geddes: It is understood plaintiff is objecting to all this testimony.

We went into the abdomen with the idea of relieving the obstruction. This was the only means of saving him at this time. From the time I first saw him until the operation

there was absorption into the system of toxin. By toxin, we mean poison. They are produced by germs. One germ will produce millions in twenty-four hours.

The higher up in the bowel the obstruction the more deadly the toxin. The toxin is discharged all through the body. It paralyzes the sleeping power, the muscles and the heart.

[fol. 305] When we opened up the abdomen the idea was to close the opening made in Boston, and to try to use the cavity of the tube clear through. It was impossible to relieve the obstruction. It was impossible to keep Mr. Kramer on the table long enough to relieve these obstructions because he could not have stood the shock.

The peritoneum surrounds the bowel, and peritonitis was liable to result from an operation and is frequently fatal. It took me two hours to remove the obstructions at the post mortem. We could not do that during life at all. All that we could do was simply to relieve as much as possible.

He took nourishment immediately after the operation through the mouth and through the bowel all the time. The digestive process takes place in the intestines and most of the absorption.

He was operated on December 20th, and probably remained in the hospital a month or five weeks. He was not able to attend to any business.

He finally got in shape to be taken home. In my judgment it would not have been possible for Mr. Kramer to have made a trip to El Dorado. His condition, after he was taken home, was practically the same as before. I saw him once a day, and sometimes twice or three times a day after he was taken home; that is, to the home of his brother. He continued to absorb the toxic poison and we kept him under the influence of opiates. Where the dose is often repeated it dulls the mental faculties. If the books of the Butler County State Bank had been brought there for his examination I would not have permitted it. He did not have sufficient strength to do so. He was starving to death. He died on July 26, 1923.

(Transcript, 276-282.)

[fol. 306] Cross-examination:

I live about six or seven miles from the Rudolph Kramer home. I waited on Mr. Kramer from November 4th, 1922, to December 20th, 1922, before I performed the operation. It was progressively getting worse during this time.

His brain was not totally paralyzed, I did not say that in my testimony. I find in this letter that the patient says he is not able to write the letter himself and that he is scarcely able to dictate it to the stenographer, it indicates to my mind that he feels weak and prostrated and that his affliction has affected his mentality.

At the time that I performed the operation on him it is a possibility that he was in such a condition that he could have executed a codicil to his will.

(Transcript, 282-283.)

J. H. Kramer, called as a witness on behalf of the defendant C. L. Harris, executor, testifies in substance as follows:

Direct examination:

I am a brother of T. A. Kramer, deceased, I was with him on a trip in July, 1922, in the course of that trip we came to Boston, Massachusetts. My home is at Fairfield, Illinois. I met Mr. T. A. Kramer in East St. Louis; we went to Boston on a boat to Provincetown. He took severely ill on the boat from Provincetown to Boston. He was getting worse when we reached Boston and we took him to the hotel and got a physician and then took him to the Commonwealth hospital. He was operated on at the Commonwealth hospital. I remained with him six weeks. He was not able to be out of the hospital nor attend to any business. His brother R. J. came and remained about four [fol. 307] weeks and another brother come and stayed about five weeks. My brother and his wife brought T. A. Kramer from Boston, a nurse came with them.

(Transcript, 284-285.)

RUDOLPH KRAMER, called as a witness on behalf of the defendant C. L. Harris, executor, testifies in substance as follows:

Direct examination:

I am a brother of T. A. Kramer, deceased; am an attorney at law and have been practicing law in East St. Louis over twenty years. I remember T. A. Kramer coming to East St. Louis in July, 1922. He was there maybe ten days visiting there.

He left with J. H. Kramer for a vacation trip in the east. I next saw him about the 19th or 20th of August in a room in a hospital in Boston, he was in bed and had been operated on. I remained with him until the 6th of September. He suffered continuously. My brother E. C. Kramer and wife and the nurse brought him to my home in East St. Louis.

He remained there at all times except while he was in the hospital. He suffered pain continuously. He was under the influence of opiates practically all the time. He had two nurses on duty and the wound would have to be cleaned and dressed and treated with vaseline.

That condition continued until he went to the hospital. He was never able after he came to my place to go to El Dorado. After he was operated on at the hospital he was brought back to my home. There was never a time from the time I saw him in Boston till he died but what partly digested food was coming out of the wound.

(Transcript, 286-288.)

[fol. 308] Cross-examination:

I don't know whether he was in the hospital on the 20th day of January, 1923. The handwriting to Exhibit 23 is undoubtedly his handwriting. The words—1007 West Central Avenue, El Dorado, Kansas—is T. A. Kramer's handwriting. I was not present when the document you hand me was signed. I know Mr. Campbell, he is a lawyer in East St. Louis and that is his signature. I know Mr. R. E. Costello, he is a lawyer in East St. Louis and that is his signature. They are both reputable gentlemen.

I remember of you being at my office in East St. Louis. All of T. A. Kramer's business that Judge Benson did not look after here I looked after. When I learned of these suits I gave them some attention. The best as an Illinois lawyer could. I remember you were there to take depositions in some case. I know that I discussed the proposition with you of taking his deposition and that you went to my home and saw T. A. King.

I understood that you were there to take his deposition but he could not talk long enough and you had to give it up and quit. I do not know that further arrangements were made with you for the taking of that deposition, after you returned to El Dorado. I thought it was all abandoned.

Mr. Brewster: We rest.

Mr. Geddes: The plaintiff now moves the court to strike out and take from the consideration of the jury all of the testimony of each and every witness on behalf of the defendant Kramer, in regard to his physical and mental condition, as being incompetent, irrelevant and immaterial, not within the issues in this case, and being no defense or any part of a defense to the plaintiff's cause of action.

Overruled.

(Transcript, 288-290.)

[fol. 309] REBUTTAL EVIDENCE OF PLAINTIFF

Offers in Evidence

Mr. Geddes: I want to offer in evidence the petition for probate of the last will and testament of T. A. Kramer, as shown from the files and records of the Probate Court of Butler County, Kansas.

(Marked Exhibit 44.)

Mr. Brewster: The defendant, C. L. Harris, as executor, objects to Exhibit 44, as being incompetent, irrelevant and immaterial, not tending to prove any issue in this case—the execution of the will and the appointment of Mr. Harris as executor being admitted.

The probation of the will being admitted, the evidence in that will will not be competent proof in this case.

Objection overruled.

Mr. Geddes: I now want to offer in evidence the deposition of Bruce A. Campbell, and the deposition of R. E. Costello, with reference to the execution of the codicil to the last will and testament of T. A. Kramer; as same appear on file and in the Probate Court of Butler County, Kansas.

(Marked Exhibit 45.)

Mr. Brewster: The defendant, C. L. Harris, as executor, objects to Exhibit 45 as being incompetent, irrelevant and immaterial, not tending to prove any issue in this case—the depositions not being taken in this case, but having been taken in an *ex parte* proceeding, and are not admissible in this case—the making of the codicil and admission to probate being admitted.

Objection overruled.

Mr. Geddes: I now offer in evidence the paper which has been marked Exhibit 46, the same being an instrument dated June 20, 1923, and designated codicil to the last will and testament of T. A. Kramer.

The Court: What do you want that for?

[fol. 310] Mr. Geddes: Because it shows the date of the execution and also shows Mr. T. A. Kramer's signature.

The Court: This instrument will be permitted to be introduced for the purpose of getting the date and the fact of the signature of Mr. Kramer to it.

Mr. Brewster: The defendant C. L. Harris objects to Exhibit 46 as being incompetent, irrelevant and immaterial.

The capacity to make a will is entirely different from the capacity required to transact business; and therefore this Exhibit 46 does not tend to prove any fact or circumstance material in this case.

Objection overruled.

Mr. Geddes: I am also offering in evidence the signature of the witnesses, and the attestation to the execution of the will.

Mr. Brewster: To which the defendant C. L. Harris, as executor, objects as being incompetent, irrelevant and immaterial.

The Court: That will be admitted, but the instrument itself will not be admitted.

Mr. Geddes: I want to offer in evidence Exhibit 46 for the further purpose of showing that the appointment of C. L. Harris is under the codicil, and that he is acting under the codicil.

Mr. Brewster: That is admitted.

(Transcript, 291-292.)

C. C. Sheldon, called as a witness in rebuttal on behalf of the plaintiff, testifies in substance as follows:

Direct examination:

I have lived in El Dorado all my life. Was formerly publisher of the Walnut Valley Times. I know the defendant C. L. King.

[fol. 311] Q. Do you recall having a conversation with Mr. King, in regard to the Butler County State Bank, a short time prior to the time it closed its doors?

Mr. Brewster: The defendant C. L. Harris, as executor, objects as being incompetent, irrelevant and immaterial, and not tending to prove any issue as against him.

Sustained.

The Court: Objection will be sustained as to all defendants, except Mr. King.

Mr. Malloy: We object for the reason that it is not proper rebuttal.

Overruled.

Mr. Malloy: We object further for the reason that no proper foundation has been laid for the introduction of this testimony.

Overruled.

I had a conversation with C. L. King about a week or two before the Butler County State Bank closed its doors.

I told Mr. King that I had heard rumors that things were not right over at the bank and if there was any inside information I wanted it. He told me that since Adams' death

they had been having troubles but that they had been ironed out and he thought that everything was all right.

(Transcript, 293-294.)

C. L. Ramsey, called as a witness in rebuttal on behalf of the plaintiff, testifies in substance as follows:

I heard the testimony of C. L. King. I recall the day on which the Butler County State Bank was closed. I telephoned Mr. King and asked him to come. It was in the morning when I called him. He said he would be up in a few minutes.

[fol. 312] He came sometime in the evening after I called him again. Mr. Lloyd and Mr. King and myself were there.

Q. Tell the jury what was said there on that occasion?

Mr. Brewster: The defendant, C. L. Harris, as executor objects to this testimony as being incompetent, irrelevant and immaterial.

The Court: Objection will be sustained as to all defendants, except King.

Mr. Geddes: This is offered only as against King, in rebuttal to his testimony.

We talked about the bank and how it was closed and he said he was satisfied everything would be all right. He said he was going to reorganize the bank right away.

I don't know as he told me who was going to reorganize it but Frazier was going to put considerable money in and continue and everything would be all right.

(Transcript, 294-295.)

K. M. Geddes, called as a witness in rebuttal on behalf of the plaintiff, testifies in substance as follows:

Direct examination:

I reside in El Dorado, am one of the attorneys for the plaintiff in this case. I heard the testimony of Mr. Wilson in regard to the conversation that I had with him in Topeka. Mr. Jones and I went into the bank commissioner's office at Topeka some time after the filing of this law suit. It

was some time in September, the exact date I cannot give. But it was in September, 1923.

I said to Mr. Wilson in discussing the conditions of the Butler County State Bank, that one of the questions to be determined in this litigation was whether or not the Butler County State Bank was solvent or insolvent. Mr. Wilson [fol. 313] said to me in the presence of Mr. Jones, that the Butler County State Bank was insolvent when Mr. Adams died and that it had never been solvent since.

Cross-examination:

I don't know when Mr. Wilson went into the bank commissioner's office. When I went into the department on that occasion I was looking for the records in the banking department. I don't think I made any suggestion to Mr. Wilson that the bank was insolvent other than to tell him that, that was one of the questions in this litigation.

(Transcript, 296-297.)

John J. Jones, called as a witness in behalf of plaintiff in rebuttal, testifies in substance as follows:

Direct examination:

My name is John J. Jones. I live at Chanute, Kansas, am practicing law and am one of the attorneys for the plaintiff in this case. I recall an occasion when you and I were at the state bank commissioner's office at Topeka and had a conversation with Mr. L. L. Wilson.

That was between the 14th of June, when this case was filed, and the 5th day of September, 1923. I heard the conversation between you and Mr. Wilson in substance, you asked Mr. Wilson to get the reports of the Butler County State Bank and while they were getting these reports you told Mr. Wilson that one of the questions we wanted to look into was whether or not the bank was insolvent. Mr. Wilson said the bank was insolvent at the time of Mr. Adams' death and never had been solvent since that date.

[fol. 314] Cross-examination:

This was not the only trip that I made up there with Mr. Geddes. I rather think it is the only time we interviewed Mr. Wilson.

(Transcript, 298-299.)

Additional testimony offered in the trial of the case of The Ramsey Petroleum Company versus E. F. Adams et al., No. 12,240, in the trial of that action to the court at El Dorado, Kansas, on April 12th, 1926.

Mr. Geddes: It is admitted by and between the parties to this action that the Ramsey Petroluem Company, at the time of this suit, and at all times referred to in the plaintiff's amended petition, was and is now a Kansas corporation, whose principal place of business is El Dorado, Kansas.

Mr. Geddes: It is admitted by and between the parties to this action, that the various deposits alleged to have been made, as set out in the plaintiff's amended petition, were actually made, in the amounts and at the times alleged in said amended petition; and that on the 13th day of March, 1923, the plaintiff had a general checking account in the Butler County State Bank of El Dorado, Kansas, in the sum of $7,397.57, prior to the making of his first deposit on that day.

G. L. Ramsey, called as a witness on behalf of the plaintiff, testifies in substance as follows:

Direct examination:

I am the president of the Ramsey Petroleum Company and was president of the Ramsey Petroleum Company in the year 1923 at all of the times referred to in the amended petition in this case.

At the closing of the Butler County State Bank I received from the assistant receiver a certificate on the guar- [fol. 315] anty fund of the State of Kansas. I have that certificate now. On that certificate two payments have been made to the Ramsey Petroleum Company.

The first payment is dated September 5th, 1923, and the amount is a twenty per cent dividend amounting to $6,-

316.59. That payment was not in fact made on that date The date of the next payment is December 24th, 1925, and the amount is a ten per cent dividend amounting to $3,158.29, making a total payment of $9,474.88.

This certificate is now and has been at all times owned by the Ramsey Petroleum Company and the Ramsey Petroleum Company is the owner of the deposits alleged to have been made by it in the Butler County State Bank as set forth in the amended petition and of the balance of $31,582.98. Other than the two payments above no part of it has been paid. I have computed the amount due the Ramsey Petroleum Company at this time, on the deposits in the Butler County State Bank at the time it closed, as of today but I haven't the figures before me. I computed the balance due or rather the unpaid amount of the $31,582.98 without interest after deducting the amount of the two payments, that leaves a balance unpaid of $22,108.10. In that computation I have figured no interest whatsoever.

(Transcript, 2-4.)

Cross-examination:

The certificate bears two per cent interest because the bank was paying two per cent on the deposits. The company had a special arrangement with the bank by which it got interest on a checking account.

Further cross-examination by Mr. McKay:

I don't know how long prior to the closing of the bank that arrangement existed. After I heard about the others getting it I went down and got it.

[fol. 316] ARGUMENT OF COUNSEL

Mr. Geddes: The plaintiff now moves the court to strike out and take from the consideration of the court all the testimony of this witness with reference to the rate of interest allowed to the Ramsey Petroleum Company on its deposits in the Butler County State Bank of El Dorado, Kansas, as being wholly incompetent, irrelevant and immateral, and not within the issues of this case.

Overruled.

The Court:

Q. Mr. Ramsey, have you a judgment as to about how long it was?

A. I don't know how long.

Q. Several months?

A. I suppose so, but that would be guessing. I don't know how long.

(Transcript, 4-5.)

Mr. Geddes: It is hereby stipulated and agreed by and between the plaintiff and each of the defendants in this action, that the statements of counsel made on behalf of the plaintiff and on behalf of each and all of the defendants, and all of the evidence in the case of G. L. Ramsey v. E. F. Adams et al., heretofore tried in this court, may be considered by the court as the statements of counsel and part of the evidence in this action.

The plaintiff rests.

Mr. McKay: The defendant, E. F. Adams, demurs to the evidence on behalf of the plaintiff for the reason that the same does not prove or tend to prove any cause of action in favor of the plaintiff and against this defendant.

Sustained.

Mr. Brewster: I make the same demurrer on behalf of the defendant, C. L. Harris, as executor of the estate of T. A. Kramer.

Overruled.

[fol. 317] Mr. Woodward: The same demurrer on behalf of the defendant, Geo. W. Lyon.

Sustained.

Mr. Bond: The same demurrer on behalf of the defendant, L. D. Hadley; and for the further reason that the plaintiff has shown no legal capacity to bring or maintain this action.

Overruled.

Mr. McKay: The defendants, C. L. King, H. F. Ferry, and A. B. Ewing, demur to the evidence of the plaintiff for

the same reasons, and further for the reasons which are fully set forth in the objections to the introduction of testimony in the case of G. L. Ramsey v. E. F. Adams et al.

Overruled.

Mr. Brewster: The defendant, C. L. Harris, as executor, also demurs for the reasons set forth in the objections to the introduction of testimony in the case of G. L. Ramsey v. E. F. Adams et al.

Same demurrer on behalf of defendant Hadley.

Same demurrer on behalf of the defendant Lyons.

The Court: The demurrers are overruled as against all defendants, except Adams and Lyons.

Mr. Brewster: So far as the defendant, C. L. Harris, as executor, is concerned, we submit the case on the testimony introduced at the other trial.

Mr. McKay: The defendants, C. L. King, H. F. Ferry and A. B. Ewing, submit the case on the testimony introduced in the case of G. L. Ramsey v. E. F. Adams et al.

Mr. Bond: The defendant, L. D. Hadley, submits the case on the evidence introduced at the other trial.

(Transcript, 6-7.)

[fol. 318]

EXHIBIT 1

Statement of Account in Account with the Butler County State Bank, El Dorado, Kansas

Name: G. L. Ramsey
Address: ——

Date	Checks in detail			Date	Deposits	The last amount in this column is your balance. O. D. indicates overdraft.	
				3-1-23	3676.35		
Mar. 5	.....	1600.00	.....	Mar. 5	117.50	Mar. 5	2193.85
Mar. 6	.....	25.00	.....	.....	.....	Mar. 6	2168.85
Mar. 8	251.36-	17500.00	.....	Mar. 8	40000.00	.....	.....
.....	.....	.....	.....	.....	.....	Mar. 8	24417.49
.....	.....	.....	.....	Mar. 12	1411.17	Mar. 12	25828.66
.....	.....	.....	.....	Mar. 13	1600.00	Mar. 13	27428.66
.....	.....	.....	.....	Mar. 16	.....	Mar. 16	19134.31
Mar. 16	3022.50-	5239.54-	32.31	Mar. 26	3615.60	Mar. 26	22726.16
Mar. 17	23.74	.....	.....				

[fol. 319] EXHIBIT 2

Return with pass book for entry.

Deposited with the Butler County State Bank, El Dorado, Kansas, by G. L. Ramsey, 3-26-23

	Dollars	Cents
Currency	....	..
Silver	....	..
Gold	....	..
Checks as follows:		
Ed R. Chastain	300	
B. J. Hamilton	2810	43
Harmon	505	17
	3615	60

Duplicate. L. D. Hadley, Asst. Cashier.
6 total.
Not Negotiable. Duplicate Deposit Slip. Received by —— ——.

EXHIBIT 3

Return with pass book for entry.

Deposited with the Butler County State Bank, El Dorado, Kansas, by G. L. Ramsey, 3-13-23

	Dollars	Cents
Currency	....	..
Silver	....	..
Gold	....	..
Checks as follows:		
R. L. Oil Co. for Lease	1600	

6. Total Not Negotiable.
Duplicate Deposit Slip.
Received by GMB.

[fol. 320] EXHIBIT 4

Return with pass book for entry.

Deposited with the Butler County State Bank, El Dorado, Kansas, by G. L. Ramsey, 3-9-23

	Dollars	Cents
Currency	....	..
Silver	....	..
Gold	....	..
Checks in Detail:		
G. L. R. Check	40000	00

Total Not Negotiable. Duplicate Deposit Slip.
Received by —— ——.

EXHIBIT 5

Return pass book for entry.

Deposited with the Butler County State Bank, El Dorado, Kansas, by G. L. Ramsey, 3-12-1923

Checks as follows:

	Dollars	Cents
H. D. Springer	900	00
Harmon	465	08
Sterling Dunkel	46	09
	1411	17

Total. Not Negotiable. Duplicate Deposit Ticket.
Received by G. M. Beck.

[fol. 321]

PLAINTIFF'S EXHIBIT 6

Plaintiff's Exhibit 6 is the official statement of the financial condition of the Butler County State Bank of El Dorado, Kansas, at the close of business on the 17th day of March, 1923, filed with the State Bank Commissioner of the State of Kansas. It is signed by C. L. King and H. F. Ferry.

Among other things it shows: Overdrafts in the amount of $30,273.88.

Excess loans as follows:

Name	Date	Due	Amount	Security
Adams & Grant	4/20/22	10/20/22	$28,000.00	Farm & Stock Belton Mo.
J. B. Adams and C. L. King	10/ 2/20	4/ 2/21	10,000.00	Personal Note.
E. J. Andrew	9/26/22	1/26/23	18,783.72	Deed Rnch Hodgeman Co Ks.
E. F. Andrew	9/26/22	2/ 1/23	18,012.72	Chattl Mtg Cattle.
Noah Artz	11/29/22	5/29/23	36,425.00	Chattl & R. E. Mtg.
W. A. Beaumont	12/30/22	2/24/23	17,000.00	R E Mtg Texas land.
do	12/30/22	2/24/23	2,704.47	Ridalgo County.
L. L. Beye	7/ 9/22	1/ 9/23	11,613.27	End Adams Est & F E Devlin.
do	10/31/22	1/17/23	15,250.00	Personal.
do	1/23/23	4/17/23	18,750.00	do.
do	1/23/23	Demand	378.84	do.
do	11/30/17	11/30/22	5,600.00	R. E Mtg Home.
El Dorado Hot. & Theater	11/ 1/20	1/ 1/31	30,000.00	1st Mtg Bonds.
Fidelity Refining Co	10/25/19	Payments	57,240.00	1st Mtg Bonds.
Red Ball Refining Co	8/ 1/21	11/ 1/21	25,689.00	Fidelity Refining Co.
do	3/ 1/21	11/ 1/21	25,690.00	do.
do	8/ 1/21	11/ 1/21	25,689.00	do.
H. C. Miller	12/26/22	6/ 1/23	4,626.21	Bonds Fidelity Ref Co.
[fol. 322] W. H. Odell	2/10/23	6/ 1/23	4,581.69	do.
C. E. Rebstein	12/28/22	6/ 1/23	4,572.78	do.
Chas. A. Popkin	12/26/22	6/ 1/23	4,581.69	do.
A. H. Stone	12/26/22	5/ 1/23	13,660.57	do.
C. W. Merydith Cont. Co	6/22/20	12/22/20	90,833.08	Mortgage on all equip.
do	7/21/20	10/21/20	10,000.00	do.
do	11/20/20	Demand	25,000.00	do.
do	12/31/21	Demand	25,000.00	do.

do	1/19/23	4/19/23	7,600.00	do.
do	Overdraft	.....	23,959.26	
Ed. H. Merydith	5/22/22	11/22/22	19,860.00	152 Shrs Emerald Oil Co.
C. W. Merydith	11/20/17	Payts	3,700.00	R E Mortgage Home.
A. C. Williams	6/ 8/21	8/22/21	94,500.00	Mortgage all equipment.
do	12/31/21	Demand	12,000.00	do.
Mid Co Packer Co	3/ 1/23	9/ 1/23	52,155.60	Unsecured.
do	3/ 1/23	9/ 1/23	9,360.00	Chattel Mortgage.
J. C. Robinson	6/ 5/22	8/22/22	1,000.00	Unsecured.
L. M. Robinson	6/27/22	7/ 9/22	4,400.00	Mid Co Packer Stk Per- Loan.
do	6/27/22	7/12/22	3,500.00	Personal note.
do	6/27/22	7/15/22	1,000.00	do.
L. M. Robinson	8/22/21	1/10/22	11,530.00	Gaylord Mfg Co Stock.
Gaylord Mfg Co	6/ 7/21	8/24/21	8,200.00	do.
Mr. J. T. Morgan	4/29/22	10/ 3/22	26,233.00	Unsecured.
M. Sokolow	3/15/21	5/ 2/21	16,470.41	Mtg on all tools & sup.
do	10/11/21	Demand	1,738.81	do.
do	5/27/22	8/27/22	3,484.85	do.
			$807,873.97	

(See Transcript 37-50 and 51.)

[fol. 323] EXHIBIT 7

Officers: C. L. King, President; A. B. Ewing, Cashier; H. F. Ferry, Vice-President: E. F. Adams, Vice-President; L. D. Hadley, Asst. Cashier; J. B. Adams, Chairman of the Board

The Butler County State Bank

Established 1909

Capital 100,000.00. Surplus 32,000.00

El Dorado, Kansas, August 6th, 1921.

Hon. F. H. Foster, Bank Commissioner, Topeka, Kansas.

Attention Mr. J. H. Sandell

DEAR SIR: We have your- of the 5th and give you below comparative statement as of March 8th, the date of our examination, and August 5th.

Loan*d* & Discounts—Mch. 8, 1921		$1,896,031 24
	Aug. 5, 1921	$1,784,452 35
Showing reduction of		$111,578 89
Deposits: Aug. 5, 1921		$1,995,262 64
	Mch. 8, 1921	1,917,852 64
Showing a gain of		77,409 90
Rediscounts: Mch. 8, 1921		$211,875 27
	Aug. 5, 1921	88,660 00
Showing a reduction of		123,215 27

[fol. 324] At the time of Mr. Adams death we were carrying a number of notes which he had assigned without recourse and which he had rediscounted with our correspondents with his personal endorsement. These were obligations of the bank and we have taken them all up so our rediscounts properly speaking would show a reduction of

almost $200,000.00. I might add that we have no obligations now in the way of rediscounts or bills payable except the $88,660.00.

Our loans and discounts do not show the reduction they should for the fact that we have been carrying the Merydith Contracting Company, one of our large debtors, on a paving job at Florence, Kansas, and are now carrying $50,000.00 or $60,000.00 in Florence City Warrants, which will be taken up in the near future or as soon as they sell their bonds.

At the time Mr. Bradlee examined us there were 140 notes which he listed for attention. In looking over the list this evening I notice there are 42 of these left, in other words, we have cleaned up 98 of them. The 42 remaining are receiving our attention and we feel quite sure that most of them will be taken up within the near future.

Referring to excess loans, I wish to make the following report:

Empire Gas & Fuel Company loan has been reduced over $50,000.00.

L. L. Beye Note reduced about $25,000.00.

Fidelity Refining Co., note, no change.

C. W. Merydith Con. Co. reduced about $8,000.00.

A. G. Williams reduced $15,500.00.

Isador Scrinspskie reduced below legal limit.

Mid Co Packer Co. No change but all back interest and advance interest paid in cash.

[fol. 325] L. M. & J. G. Robinson no change but all back interest and advance interest paid in cash.

The Merydith Contracting Co. will soon finish their Wichita paving job from which they will be able to materially reduce their indebtedness. We have an assignment of all of their estimates as allowed by the County, same being mailed direct to us. We will sustain a loss on Merydiths—just how much we do not know—but we are going to charge out their notes as our earnings will permit.

The Fidelity Refining Co., is consolidating with another company who have a line of filling stations in Kansas and Oklahoma and things look much brighter for this company and we feel sure we will work out with them without a loss.

We did not declare any dividend at our semi-annual meeting in July but used up all of our earnings in charging out

our losses. We will continue to do this until we get cleaned up. Things are looking better for us and we believe that we will be able, with your indulgence, to get institution on a sound basis again.

Respectfully, Butler County State Bank. C. L. King, President.

CLK-W.

[fol. 326] EXHIBIT 8

Officers: C. L. King, President; A. B. Ewing, Cashier; H. F. Ferry, Vice-President; E. F. Adams, Vice-President; L. D. Hadley, Asst. Cashier; J. B. Adams, Chairman of the Board

The Butler County State Bank

Established 1909

All Deposits in this Bank are Guaranteed

Capital $100,000.00. Surplus $32,000.00

El Dorado, Kansas, November 15, 1921.

Hon. F. H. Foster, State Bank Commissioner, Topeka, Kansas.

DEAR MR. FOSTER: I am enclosing herewith copy of minutes of the meeting of our directors held November 14th, 1921, from which you will see that we have used up all of our earnings and $60,000.00 of our surplus account in charging out bad paper.

Trusting you will find same satisfactory, I beg to remain

Yours very truly, C. L. King.

CLK'W.

(Transcript 53.)

[fol. 327] EXHIBIT 9

Officers: C. L. King, President; A. B. Ewing, Cashier; H. F. Ferry, Vice-President; E. F. Adams, Vice-President; L. D. Hadley, Asst. Cashier; J. B. Adams, Chairman of the Board.

Established 1909

The Butler County State Bank

Capital $100,000.00. Surplus 32,000.00

El Dorado, Kansas, Sept. 28th, 1921.

Hon. F. H. Foster, State Bank Commissioner, Topeka, Kansas.

DEAR SIR: We had a message from Mr. N. F. Frazier, Jr. stating that he would be home Sunday Oct. 2nd. Mr. Frazier has been in Colo. eighty miles from a railroad station. If satisfactory with you Mr. Frazier and myself would like to meet you in Topeka Monday Oct. 3rd for conference. Kindly advise me at once if this meets with your approval.

Yours truly, C. L. King.

EXHIBIT 10

Officers: C. L. King, President; A. B. Ewing, Cashier; H. F. Ferry, Vice-President; E. F. Adams, Vice-President; L. D. Hadley, Asst. Cashier; J. B. Adams, Chair-
[fol. 328] man of the Board.

Established 1909

The Butler County State Bank

Capital $100,000.00. Surplus 32,000.00

El Dorado, Kansas, Sept. 21, 1921.

Hon. F. H. Foster, Bank Commissioner, Topeka, Kansas.

DEAR SIR: I am writing you concerning one of the requirements made by the Deputy Bank Comm. wherein they asked us to call the stockholders together and levy an assessment of fifty per cent. This meeting to be called in ten

days from date of notice. I am asking permission to defer this action until the return of Mr. N. F. Frazier, Jr., which will be about a week or ten days. Mr. Frazier represents his sister Mrs. Adams who holds over seventy per cent of the stock.

Trusting you will see your way clear to grant this permission, I remain,

Yours truly, C. L. King.

EXHIBIT 11

Sept. 26, 1921.

C. L. King, President, Butler County State Bank, El Dorado, Kansas.

DEAR SIR: Your letter of September 21 did not come under my eyes until today on account of absence from the office three days last week,

[fol. 329] I cannot at this time consent to deferring action the length of time you request, but will advise you further with regard to it in two or three days. There may be some other matters I may want to communicate with you about in that time.

Yours very truly, —— ——, Bank Commissioner.

(Writer's Note.—Exhibit 35 is the original letter of which Exhibit 11 is a carbon copy. The original is signed by F. H. Foster. Exhibit 34 is the carbon copy of which Exhibit 10 is the original.)

EXHIBIT 12

Officers: C. L. King, President; A. B. Ewing, Cashier; H. F. Ferry, Vice-President; E. F. Adams, Vice-President; L. D. Hadley, Asst-Cashier; J. B. Adams, Chairman of the Board.

The Butler County State Bank

Capital $100,000.00. Surplus, 32,000.00

El Dorado, Kansas, June 28th, 1922.

Hon. F. H. Foster, Bank Commissioner, Topeka, Kansas.

DEAR MR. FOSTER: I have before me your letter of June 27th, and have given the same carefull and serious thought.

I regret that our report did not show more improvement than it does, but I wish to assure you that we have worked hard, been on the job all the while, and done our best to bring about a better condition in our bank.

[fol. 330] Concerning the matters about which you write, I will take them up in the order mentioned in your letter. about the new loan with M. Sokolow, as you remember Mr. Sokolow, owed our bank about $17,000.00 and the Citizens State Bank about $6,000.00. Our joint security consisting of a mortgage on a lot of casing, tools and other property used in the oil fields and that owing to the decline in the value of such property we were not fully secured. Mr. Sokolow also owed the Farmers & Merchants National Bank and they had started action to foreclose their mortgage on casing and a complete set of drilling tools which would have caused Mr. Solokow to shut down his drilling operations. He was drilling two wells, for one of which he was to receive $9,000.00 at a depth of 1,900 feet, and the other one was on a tract of 160 acres for which he was to receive a half interest in the acreage. The half interest was duly assigned to him and was on acreage that looked very promising. We had a reliable and competent man, one who knows the value of casing and tools make a special and personal valuation of the security held by the Farmers & Merchants National Bank and he reported it worth under present conditions, at least $5,000.00. We took the matter up with the Farmers & Merchants National Bank and secured an assignment of their security by paying them for credit on Mr. Sokolow's indebtedness to them, $3,000.00. We also took an assignment of the $9,000.00 contract and a mortgage on the half interest in the 160 acres, our attorney telling us that it would be better to take a mortgage rather than an assignment and in consideration of the assignment and mortgage we furnished him $2,000.00 additional which he told us would be sufficient to complete the two wells. Our bank and the Citizens State Bank each carry their part [fol. 331] of the new loan.

This action was taken after conference with Mr. Frazier, Mr. Ferry and Mr. T. A. Kramer, our attorney, and after due consideration that it would be for the best interests of the bank to make the additional loan and believing if we had had time to bring the matter fully to your attention that you would approve it. Mr. Sokolow has completed the

one well for which he is receiving an undivided one half interest in the 80 on which the well is drilled and the adjoining 80 and the well is reported to be good for about 100 barrels. We now believe that Mr. Sokolow will be able to pay every dollar he owes and that the additional loan was a good investment for the bank.

Concerning our overdrafts: The principle amount of these is in the account of the Merydith Construction Company. They had one or two jobs early in the spring of laying some pipe lines, on which owing to the wet weather they lost money. We have stopped them from taking any work on which after careful investigation we find they cannot make a profit. We are trying to secure for them a portion of the dirt work on the new Santa Fe line which is to be built into El Dorado in the near future. They have the equipment, fully understand this kindo of work, and we are in hopes of being able to secure it for them at a figure that will help reduce their indebtedness to the bank.

Concerning our deposits: Think most banks will show a decline and perhaps ours shows no greater percentage than others. I think we have been fortunate in holding our deposits as well as we have when we take into consideration the difficulties under which we have been laboring, I note that you do not believe that we are making the progress [fol. 332] that we should. The Bank has been under new management for about fifteen months, during which time we show the following improvement as between March 8, 1921 and June 27, 1922.

Cash and Sight Exchange March 8-1921	$108,389 89
Cash and Sight Exchange June 27-1922	380,744 24
Showing a gain of	$272,354 35
Loans and Discounts March 8-1921	$1,896,031 24
Loans and Discounts June 27-1922	1,485,926 46
Showing a decrease of	$410,104 78
Deposits March 8 1921	$1,917,852 64
Deposits June 27-1922	1,923,764 80
	$5,912 16

Overdrafts March 8-1921	$18,574 42
Overdrafts June 27-1922	9,240 76
Showing a decrease of	9,306 66
Rediscounts March 8-1921	$211,825 27
Rediscounts June 27-1922	23,750 00
Showing a decrease of	$188,075 27

Excess Loans

Merydith and Williams of The Merydith Construction Co., owed us March 8-1921 $302,246 74, and on June 27, 1922 $254,921.08 showing a decrease of $47,325.66.

Empire Gas & Fuel Company owed us March 8, 1921, $87,247.85 and on June 27, 1922 $26,047.18, showing a decrease of $61,200.67.

Isadore Scrinopskie owed us March 8, 1921, $37,625.00 and on June 27, 1922, $21,044.18 showing a reduction of $16,580.82.

L. L. Beye owed us on March 8, 1921, $88,000.00 and on June 27, 1922 $45,613.27, showing a decrease of $42,386.73. [fol. 333] Mr. Beyes indebtedness would show a greater decrease were it not for the fact that on March 8, 1921, The Woodson Oil Company owed us $43,401.06 which later was divided between the partners of the company, each partner endorsing for the other and Mr. Beyes portion was $11,-613.27. The Adams state paid their portion in cash $11,613.27.

E. J. Andrews owed us on March 8, 1921, $49,451.35 and on June 27, 1922 $38,971.82, showing a decrease of $10,723.01.

Mid Co Packer Company owed us on March 8, 1921, $88,-723.01 and on June 27, 1922 $84,683.01, showing a decrease of $4,040.00.

The Noah Artz and Sons loan has been increased about $5,000.00 since March 8, 1921. The note was just renewed the other day for six months, interest paid in cash in advance. You will remember they owed us thirty odd thousand unsecured and that after a conference with you we increased this $5,000.00 taking a second mortgage on their

farm which we believe gives us ample security for the entire debt.

The Red Ball-Fidelity loan is just about the same as of March 8, 1921, with the exception that the notes have been renewed and the interest added. No new money has been advanced to them. In fact they have paid us a few thousand.

Now as to the future outlook on some of these loans, we believe we have a good prospect of selling the Fidelity Refining Company. We have two parties wanting to buy it. Held a conference with one of them this morning and will meet the other at 3:30 P. M. This may look dangerous now but we believe that under present conditions we can sell and get out without a loss, or that if there is a loss it will be small.

[fol. 334] In the E. J. Andrews loan we have over 300 head of good hereford cattle which we are going to try to clean up this fall. This with other property which he is trying to dispose of will more than reduce this note to the legal limit.

Mr. Beye has some very profitable contracts from which we believe he will be able to reduce his indebtedness to the legal limit.

We have these excess loans in mind all the while, and are making every effort to get the reduced. After going over this letter if you have any suggestions to make or wish any further information, we will be glad to hear from you.

Yours very truly, C. L. King, President.

EXHIBIT 13

June 30, 1922.

C. L. King, President Butler County State Bank, El Dorado, Kansas.

DEAR SIR: I have read very carefully your letter of the 28th instant relative to the condition of your bank and the comparative statement between the two days March 8, 1921, and June 27, 1922. This statement in the fifteen months time of course shows quite an improvement in a good many

respects, but what I more particularly had reference to in my letter of the 27th was the fact that your showing for the last six months was hardly up to my expectations. Apparently the condition of your bank does not give you the concern that I am sure it would give me if I were in your position, but possibly I am mistaken as to that, and further I possibly let matters of that kind worry me more than do most men.

[fol. 335] The Merydith and Williams Construction Company indebtedness it seems to me places your bank in a very desperate situation. I have considerable hope that your loss on the other large excess loans you have will not be so great as to seriously impair your capital, but I do not feel at all easy with regard to the Merydith & Williams matter. I wish as soon as you can you would send me a complete statement of the notes representing the Merydith & Williams indebtedness, giving maturity and what, if any, security (describing it in full) you have behind the notes. I feel that I should know more about this indebtedness than I do so I can discuss it with you more intelligently.

Yours very truly, —— ——, Bank Commissioner.

F-K.

(Transcript 63.)

EXHIBIT 14

Exhibit 14 is the Confidential Report of the witness Harry Warren returned to the Banking Department of the State of Kansas following an examination of the Butler County State Bank of El Dorado, Kansas, on February 20th, to 23rd, 1923, as at the close of business on February 20th, 1923, and was admitted in evidence as against the defendant C. L. King. (Transcript 69.)

Among other things this report shows as follows, under the head of Summary of Condition:

Sight Exchange: 5% Deposits decreased $400,000, past sixty days.

Deposits $1,288,696.00. Pay interest on nearly 4/5ths.

Loans $1,376,000.00. Stockholders $78,000.00 12 excess $754,755.

Borrowed Money $250,000.00.

$62,042.00 cash and sight exchange: Running low the last month.

[fol. 336] Some large oil accounts have gone out since first of year, reducing their deposits over $400,000.00.

Earnings and Losses

Bank has over a half million dollars dead assets no revenue at all. Bank just is making expenses now. The interest and salaries are more than the interest collected. Bank showed a little profit for 1922 but this was on account of commissions on Bonds amounting to about $5,000.00. No chance to make any money while they have to buy nearly all the business and have so much dead wood. Pay good salaries $2,000.00 a year.

Over

Harry Warren, Deputy Bank Commissioner.

Loans: $1,376,000.00.

Real Estate: $74,000.00.

Loans: $1,302,000.00.

Real Estate fairly well secured and will show no loss.

Have loans to stockholders $78,000.00.

12 excess loans $755,000.00 nearly all show, questionable and worthless. There is a loss of over $300,000 in these loans. It will require years to work most of these out without a loss and the Merydith loan of $286,000.00 would not work out in a life time. This is a construction Co. and bank has had this line for years. It would take over $200,000 to clean this up at this time.

Many loans which look doubtful and I do not think of much value are said to have the Adams Estate back of them but the bank has no agreement of this kind But Mr. Frazier told me he would get the estate back of these so I asked them to have an agreement drawn up clearly defining such paper and have it signed by Mrs. Adams and they promised to do this. In the report I have made notations covering each large loan.

[fol. 337] Everything about the bank is straight and there is nothing underhanded or concealed but it will take over

$300,000.00 to clean it up. An assessment of 100% would help some but it requires more than a $100,000.00. The stockholders are all worth the double liability they told me. I asked Mr. Frazier what the Adams estate was worth and he said he could not even estimate it but he said enough to pay out the Adams transactions and if it is I would say it was a large estate for it shows he was connected with all the large lines which are no good now.

Bank should put up 100% assessment every six months for the next two years so I made no requirements only to have the Adams Estate tell them just how far they would guarantee the losses, and told the directors the bank Commissioner would take up the matter with them at once.

If their deposits go off some more they can not keep open and if they run they can not make expenses hardly, but they assured me the decrease in deposits was not a run but their customers were all loyal but a large oil co. had a fight among themselves and took the money out and spent it.

They are carrying many loans which should be Other Real Estate and have been paying taxes and interest and carrying in Other Real Estate. Also carry an account of Insurance Premiums $7,000.00 which is premium paid on life insurance on people who have large lines in the bank. These policies have a value of about $2,000.00 now.

Worthless Assets

Merydith Construction Paper	$200,000 00
Paper listed on Schedule A Sheet 11	$33,000 00
In Questionable Sched. B	$50,000 00
Cash items	$2,043 00
Insurance Prem.	5,000 00

[fol. 338] EXHIBIT 15

Plaintiff's exhibit 15 is the examiner's report of the condition of the Butler County State Bank of El Dorado, Kansas, at the close of business on February 20th, 1923, the examination having been made by Harry Warren, a deputy Bank Examiner, commencing on February 20th, 1923. This

report when compiled was forwarded to the State Bank Commissioner of the State of Kansas.

(Transcript 76-77-78.)

Among other things exhibit 15 shows under the head of Resources, Overdrafts in the amount of $25,418.68 and bank building $62,500.00. Pages 1, 2, and 3, are signed and sworn to by H. F. Ferry, cashier. Under the head of Overdrafts it shows an overdraft of Merydith Con. Co. in the amount of $21,314.15.

Under the head of Excess Loans is shown E. J. Andrews $18,783.72 due January 26th, 1923, and $18,012.72 due February 1st, 1923. Noah Artz & Son $36,425.00 due May 29th, 1923, L. L. Beye, $18,750.00 due April 17th, 1923; $15,250.00 due January 17th, 1923; $11,613.27 due January 9th, 1923; $378.84 due on demand a total of $45,992.11 and an addition L. L. Beye loan of $5,600.00, El Dorado Hotel and Theatre Bonds $30,000.00 due 1932, Fidelity Refining Co. $57,190.00; Red Ball Refining Company $25,690.00 due November 1st, 1921; $25,689.00 due November 21st, 1921; $25,689.00 due November 1st, 1921 all endorsed by Fidelity Refining Company and totaling $77,068.00.

J. G. Robinson $1,000.00 due 8 22 22; $5,000.00 due 10 4 22; $11,255.60 due 11 1 22.

L. M. Robinson $1,000.00 due 7 15 22; $3,500.00 due 7 12 22; $4,400.00 no due date; $11,530.00 due 2 21 22.

Mid Co. Packer Company $2,200.00 due 10 10 22; $2,000.00 due 10 26 22; $3,000.00 due 10 20 22; $3,000.00 [fol. 339] due 10 16 22; $9,360.00 due 9 27 22; $9,000.00 due 10 15 22; $10,500.00 due 10 5 22.

C. W. Meredith Contracting Company $10,833.08 due 12 22 20; $20,000.00 due 12 22 20; $20,000.00 due 12 22 20; $20,000.00 due 12 22 20; $1,000.00 due 10 21 20; $20,000.00 due 12 22 20; $25,000.00 due on demand; $2,500.00 due on demand and an overdraft of $21,314.15.

A. G. Williams $20,000.00 due 8 22 21; $10,000.00 due 8 20 21; $20,000.00 due 8 22 21; $9,500.00 due 8 30 21; $20,000.00 due 8 22 21; $15,000.00 due 8 8 21.

Ed. H. Meredith $19,860.00 due 11 22 22.

M. Sokolow $15,470.41 due May 2nd, 1921; $3,484.85 no due date; and $1,738.81.

Twelve excess loans $754,755.92.

Page 11 of this exhibit is signed by H. F. Ferry, A. B. Ewing, L. D. Hadley and C. L. King, Directors, and sworn to before Harry Warren, Deputy Bank Commissioner, February 22nd, 1923.

Under the head of requirements on Sheet 11 of the exhibit 15 is the following:

Second. 12 excess loans amounting to $754,755.92 are held by your bank in violation of the banking laws, you are hereby notified to reduce said loan to the legal limit within sixty days from the date hereof.

Third. Have the Adams Estate clearly define in the form of a statement properly acknowledged the paper on which the estate is liabil- as payor, guarantor or endorsor.

Dated February 22nd, 1923.

By order of the Bank Commissioner of Kansas.

Harry Warren, Deputy Bank Commissioner.

[fol. 340] We hereby acknowledge receipt of the notice to officers and directors of which the above is a true copy and we do hereby agree to comply with the terms thereof, and to notify the Bank Commissioner when the same has been done.

C. L. King, President. H. F. Ferry, A. B. Ewing, L. D. Hadley.

Exhibit 16

Exhibit 16 is an Examiner's report of the Butler County State Bank of El Dorado, Kansas, at the close of business March 26th, 1923, it bears date of March 27th, 1923 and is signed by Harry Warren, Deputy Bank Commissioner. (See Transcript 80.)

Under the head of Resources, Loans and Discounts in the amount of $1,287,869.79 are shown. And bank building $62,500.00. Overdrafts $22,659.58.

Under the head of Liabilities it shows bills rediscounted in the amount of $150,980.60; Bill Payable $38,702.00; Repurchase agreement $18,463.00 and Individual deposits $781,704.98.

Exhibit 17

Exhibit 17 is the examiner's report of the condition of the Butler County State Bank of El Dorado, Kansas, to the State Bank Commissioner of the examination completed on October 13th, 1922, as at the close of business October 10th, 1922, and consisting of 11 sheets numbered from 1 to 11. The report except 9 and 10 was offered in evidence. This examination was made by H. E. Wright (see Transcript 89-90).

[fol. 341] This report shows under the head of resources overdrafts $18,834.27, bank building $62,500.00, loans and discounts $1,351,814.51.

Among other things under the head of liabilities it shows individual deposits $990,477.83, bills rediscounted $5,000.00. Repurchase agreement $14,800.00. Sheets 1, 2 and 3 are signed by H. F. Ferry, cashier, and sworn to by him on October 13th, 1922, by H. E. Wright, Deputy Bank Commissioner.

On page 6 under the head of Loans and Discount the following is shown: $114,095.01, 57 notes over three months past due. $124,554.45 notes past due less than three months.

On page 3 under the head of Overdrafts among other things, is the following: Meredyith Contracting Company $18,092.26.

Under the head of Excess Loans, among other things, is the following: E. J. Andrew $18,057.62 dated 5/22/22, due 7/26/22; $20,914.20 dated 5/22/22 due 8/1/22; Noah Artz, et ux. $34,425.00 dated 5/27/22 due 11/30/22.

L. L. Beye $5,600.00 dated 11/30/17 due 4/4/18; $12,000.00 dated 7/17/22 due 10/17/22; $22,000.00 dated 7/17/22 due 10/17/22; $11,613.27 dated 7/9/22 due 1/9/23.

$30,000.00 Real estate mortgage bonds of El Dorado Hotel and Theatre company.

Fifteen installment bonds of the Fidelity Refining Company, the balance on each being $3,816.00.

$25,689.00 note of Red Ball Refining Company dated 8/1/21 due 11/1/21 payment guaranteed by Fidelity Refining Company; $25,689.00 note of Red Ball Refining Company dated 8/1/21 due 11/1/21; $25,690 note of Red Ball [fol. 342] Refining Company dated 8/1/21 due 11/1/21 payment guaranteed by Fidelity Refining Company.

Meredith Contracting Company total of excess loan $284,-928.20, Meredith Contracting Company overdraft $18,-092.26.

A. G. Williams $20,000.00 dated 6/8/21 due 8/22/21; $20,000.00 same date and same maturity; $20,000.00 same date and same maturity; $15,000.00 same date due 8/8/21; $12,000.00 dated 12/31/21 due on demand; $10,000.00 dated 6/8/21 due 8/20/21; $9,500.00 same date due 8/30/21; $2,-700.00 dated 11/30/17 due 8/30/18.

Ed H. Meredith $19,860.00 5/22/20 due 11/22/22.

Mid Co Packer Company $2,200.00 dated 7/25/22 due 10/10/22; $9,360.00 same date due 9/27/22; $10,500 same date due 10/5/22; $9,000.00 same date due 10/15/22; $3,-000.00 same date due 10/16/22; $3,000.00 same date due 10/20/22; $2,000.00 same date due 10/26/22.

L. M. Robinson $11,530.00 dated 8/22/21 due 1/10/22; $4,400.00 dated 6/27/22 due 7/9/22; $3,500.00 same date due 7/12/22; $1,000.00 same date due 7/15/22.

J. G. Robinson $1,737.41 dated 9/30/22 due 11/16/22; $11,255.60 dated 7/25/22 due 11/1/22; $5,000.00 dated 7/25/22 due 10/4/22; $1,000.00 dated 6/5/22 due 8/22/22.

M. Sokolow $16,470.41 dated 3/15/21 due 5/2/21; $1,-738.31 dated 10/11/21 due on demand.

Total of excess loans $776,038.36.

Sheet number 11 of this exhibit is signed by H. E. Wright and E. H. Armstrong, Deputy Bank Commissioners, below the heading requirements. In this head appears the following:

Second. 12 excess loans amounting to $776,038.36 are held by your bank in violation of the banking laws. You are hereby notified to reduce said loan to the legal limit within sixty days from the date hereof.

[fol. 343] Sheet No. 11 bears the signatures of H. F. Ferry, C. L. King, L. D. Hadley and A. B. Ewing, directors, and is sworn to before H. E. Wright Deputy Bank Commissioner, by them on October 13th, 1922.

Exhibit 18

Exhibit 18 consisting of sheets, numbered from 1 to 11 except sheet 9 offered in evidence (See Transcript 90-92.)

Exhibit 18 is the examiners' report of the condition of the Butler County State Bank of El Dorado, Kansas, as of the close of business on January 21st, 1922, made to the State Bank Commissioner, of the examination made January 23rd to 25th inclusive, 1922, by H. E. Wright, Examiner and Deputy Bank Commissioner.

Page 1 is signed by C. L. King and sworn to before H. E. Wright, also pages 2 and 3. Page 1 under the head of Resources shows overdrafts in the amount of $13,288.74 and under the head of liabilities shows bills rediscounted $35,750.00. Page 3 under the head of Overdrafts shows Meredith Con. Co. $749.25; Meredith Con. Co. A/c B $8,914.23.

Under the head of Excess Loans it shows E. J. Andrews $5,742.09 dated 1/14/21 due 1/19/22; $17,750.31 dated 11/4/21 due 1/16/22; $890.00 dated 11/4/21 due 1/30/22; $20,583.14 dated 11/4/21 due 2/1/22.

Noah Artz et ux. $36,425.00 dated 11/30/21 due 5/30/22.

L. L. Beye $27,000.00 dated 1/17/22 due 4/17/22; $12,000.00 same date and same maturity; $5,600.00 same date and same maturity.

$30,000.00 bonds of El Dorado Hotel and Theatre Company.

[fol. 344] Empire Gas & Fuel Company $9,297.02 dated 11/1/20 due on demand; $18,750.00 dated 11/21/21 due 2/20/22.

$57,240.00 fifteen installment bonds of Fidelity Refining Company date 10/25/19 to be paid $182.00 each month, fifteen payments made, last payment 11/1/1920, balance $3,816.00 each.

Ed H. Meredith $25,656.74 dated 12/22/20 due 6/22/21.

The C. W. Meredith Contracting Co. $20,000.00 dated 6/22/20 due 12/22/20; $20,000.00 same date and same maturity; $20,000.00 same date and same maturity; $20,000.00 same date and maturity; $10,000.00 dated 7/21/20 due 10/21/20; $25,000.00 dated 11/20/20 due on demand; $11,862.08 dated 6/22/20 due 12/22/20; $25,000.00 dated 12/31/21 due on demand.

Mid Co Packer Co. $9,360.00 dated 6/27/21 due 12/27/21; $3,000.00 dated 8/16/21 due 11/16/21; $3,000.00 dated 10/26/21 due 1/20/22; $10,500.00 dated 10/26/21 due 1/5/22; $2,000.00 dated 10/26/21 due 1/26/22; $9,000.00 dated 10/26/21 due 1/15/22; $2,200.00 dated 10/26/21 due 1/10/22.

Red Ball Refining Company three loans each for the sum of $25,689.00 all dated 8/1/21 all due 11/1/21 all endorsed Fidelity Refining Company.

J. G. Robinson, $11,255.60 dated 7/1/21 due 1/1/22; $1,000.00 dated 8/22/21 due 2/22/22; $5,000.00 dated 10/26/21 due 1/4/22; $1,737.41 dated 10/26/21 due 2/16/22.

L. M. Robinson, $11,530.00 dated 8/22/21 due 1/10/22; $4,400.00 dated 10/26/21 due 1/9/22; $3,500.00 dated 10/26/21 due 1/12/22; $5,000.00 dated 10/26/21 due 1/22/22.

[fol. 345] A. G. Williams, $10,000.00 dated 6/8/21 due 8/20/21; $15,000.00 same date due 8/8/21; $20,000.00 same date 8/22/21; $20,000.00 same date same maturity; $20,000.00 same date same maturity; $9,500.00 same date due 8/30/21; $12,000.00 dated 12/31/21 due on demand.

Page 11 of Exhibit 18 is headed Notice to Officers and Directors, and under the head of Requirements contains among other things the following:

Second. 17 excess loans amounting to $782,585.69 are held by your bank in violation of the banking laws. You are hereby notified to reduce said loans to the legal limit within sixty days from the date hereof. Adams and Grant $29,243.70; E. J. Anrews $44,965.54; Noah Artz $36,425.00; L. L. Beye $44,600.00; El Dorado Hotel and Theatre Company $32,100.00; Empire Gas & Fuel Company $28,047.02; Fidelity Refining Company $57,240.00; Ed H. Meredith $25,656.74; C. W. Meredith Contr. Company $139,025.56; A. G. Williams and A. W. Peters and Company $114,921.12 (the last three are associated); Mid Co Packer Company $39,060.00; J. G. Robinson $18,993.01; L. M. Robinson $24,430.00 (these three associated); Red Ball Refining Company $77,068.00 (Red Ball & Fidelity associated); Yingling Bros. Auto Company $23,000.00; Isadore Scrinopskie $23,625.00.

Third. Give the proper attention to the paper listed on the reverse side hereof also a number of small delinquent notes not listed.

Fourth. Your over drafts are too large, too many and of too long standing, charge off those of long standing and keep out chronics.

Fifth. Your "Other Real Estate" Account contains items carried in violation of the law. Attend to this as soon as possible.

[fol. 346] Sixth. Your loans are short. Put in balance as soon as possible.

Seven. Continue former requirement as to dividends and transfers of stock.

Eighth. Make comparative reports to the department monthly.

Ninth. Your "Other Bonds" account contains items that are not legal investment for a State bank. Correct this.

Please report in detail to F. H. Foster, Bank Commissioner, Topeka, Kansas, on each requirement hereon, within five days from this date.

Dated January 25th, 1922.

By order of the Bank Commissioner of Kansas.

H. E. Wright, Deputy Bank Commissioner.

We hereby acknowledge receipt of the notice to officers and directors of which the above is a true copy and we do hereby agree to comply with the terms thereof and to notify the Bank Commissioner when the same has been done.

C. L. King, President. H. F. Ferry, Cashier. L. D. Hadley, C. L. King, H. F. Ferry, A. B. Ewing, T. A. Kramer, Directors.

On the reverse side of Sheet 11 under schedule B the following loans are referred to: E. H. Meredith, Meredith Contracting company; A. G. Williams and Peters and Company; Mid Co Packer Company; J. G. Robinson; L. M. [fol. 347] Robinson; Red Ball Refining Company and other paper not specifically mentioned here.

EXHIBIT 19

Exhibit 19 consisting of 24 sheets numbered from 1 to 11 except the two sheets numbered 9 and 10 insofar as it is a reproduction of the data coming from the records of the bank was offered in evidence. This exhibit is the report of H. E. Wright, Deputy Bank Commissioner and Examiner, made to the State Bank Commissioner of his examination

of the Butler County State Bank of El Dorado, Kansas, on September 15th to September 17th, 1921, as at the close of business September 14th, 1921.

Page 1, 2 and three of such exhibit are signed and sworn to by A. B. Ewing, cashier of the bank.

Under the head of Resources on Page 1 among other things the following is shown: Loans and discounts $1,649,-791.63; Overdrafts $17 744.93; bank building $61,500.00. Under the head of Liabilities on the same sheet among other things is shown the following: Individual deposit $1,207,944.48; Bills rediscounted $39,300.00.

On Sheet 11 under the head of Notice to Officers and Directors among other things is the following:

Requirements

Second. Excess loans amounting to $820,128.91 are held by your bank in violation of the banking laws. You are hereby notified to reduce said loans to the legal limit within sixty days from the date hereof. Adams Estate $45,191.00; N. Artz & Sons $29,942.72; E. J. Andrews $51,002.20; L. L. Beye $59,600.00; Empire Gas & Fuel Company $35,897.00; Red Ball—Fidelity $138,308.00; Meredith—Williams $285,-064.84; Mid Co Packer Company $61,960.00; J. E. Sharp [fol. 348] $33,365.53; Woodson Oil Company $42,257.60; Isadore Serinopskie $31,150.00;

These excess loans are of long standing and must be reduced to the legal limit. Any that are not within the limit by January 10th, 1922, must be charged out of the bank.

See attached sheet for further requirements, the same being as though written hereon.

Dated September 17, 1921. By order of the Bank Commissioner of Kansas.

H. E. Wright, Deputy Bank Commissioner. C. S. Bowman.

We acknowledge receipt of the Notice to Officers and Directors of which the above is a true copy and we hereby agree to comply with the terms thereof and to notify the Bank Commissioner when the same has been done.

C. L. King, President. H. F. Ferry, Cashier. L. D. Hadley, T. A. Kramer, C. L. King, A. B. Ewing, H. F. Ferry, Directors.

Among other things the additional requirement attached to the requirement sheet contained the following:

Under no condition make further excess loans and do not increase any present excess.

Make no transfers of stock until permission is secured from the department. Your draft is excessive both as to number of items and as to total. Eliminate the overdraft of the Meredith Cont. Company and keep it off the books. [fol. 349] Keep your overdrafts down and charge off any of fifteen days standing at any time.

The president is directed to call a meeting of the stockholders within ten days for the purpose of levying and collecting an assessment of fifty per cent, the same in no case to be the cause of an excess loan said fifty per cent to be paid within thirty days from this date and reported to the department.

The condition of your bank is so serious as to require the very earliest compliance with all requirements.

EXHIBIT 20

Exhibit 20 consisting of 24 sheets is the report of Samuel Bradlee, Deputy Bank Commissioner and Examiner, made to the State Bank Commissioner, of the examination of the Butler County State Bank of El Dorado, Kansas, at the close of business March 8th, 1921, such examination having been made on March 11th, inclusive, 1921, and was offered in evidence and admitted on the same basis and under the same ruling of the court as all other examiners' reports (Transcript 101-103).

Pages 1, 2, and 3, of Exhibit 20, were signed and sworn to by C. L. King, president of the Butler County State Bank. Page 1 among other things under the head of Resources, shows loans and discounts $1,796,129.98; Overdrafts $18,547.42; bank building $61,500.00; and under the head of Liabilities shows individual deposit of $1,296,071.51; Surplus fund $85,000.00 and bills rediscounted $211,825.27.

Page 3 of such exhibit under the head of Overdrafts, among other things, shows Meredith Contracting Company $2,554.68; and Meredith Contracting Company B $2,619.30; Fidelity Refining Company $2,967.96.

[fol. 350] Page 11 of such exhibit designated Notice to Officers and Directors, and under the head of Requirement, among other things, contains the following:

Second. Excess loans amounting to $731,303.78 are held by your bank in violation of the banking laws. You are hereby notified to reduce said loans to the legal limit within sixty days of the date hereof. Empire Gas & Fuel Company $88,847.85; L. L. Beye $88,000.00; Fidelity Refining Company $125,419.50; C. W. Meredith C. Co., and E. H. Meredith $187,420.72; A. G. Williams $110,000.00; Isadore Serinopskie $37,725.00; Fid Co Packer Company—L. M. and J. G. Robinson $56,539.34; E. J. Andrews $37,451.35.

Third. Your attention is called to the requirement of examination 9-20-1920 which have not been complyed with that is, reduction of past due paper; Meredity C. Co. overdrafts; no overdrafts to be carried longer than ten days; time certificate account and certified check account still out of balance.

Fourth. Past due paper has increased and you are required to collect or fully secure or take it out of the assets. All notes in list herewith report the Bank Commissioner semi-monthly until cleared up.

Fifth. Overdrafts of the Fidelity Refining Company and the Meredith Com. Co., are continued. Collect and discontinue the practice.

Dated March 11, 1921. By order of the Bank Commissioner of Kansas.

Samuel Bradley, Deputy Bank Commissioner.

We hereby acknowledge receipt of the Notice to Officers and Directors of which the above is a true copy and we do hereby agree to comply with the terms thereof and to notify [fol. 351] the Bank Commissioner whenever the same has been done.

C. L. King, President. J. B. Adams. A. B. Ewing, Cashier. L. D. Hadley.

EXHIBIT 21

Exhibit 21 is the report of the examination of the Butler County State Bank to the State Bank Commissioner of

the State of Kansas, of an examination made by Will D. Kinnaman, Deputy Bank Commissioner and Examiner, as at the close of business September 18th, 1920, the examination being made and concluded September 20th, 1920 (See Transcript 104-105).

Page 1, 2 and 3 of such exhibit is signed by A. B. Ewing, cashier, and sworn to and such page among other things under the head of Resources shows overdrafts $31,984.01 and under the head of Liabilities, bills rediscounted $56,-846.59.

Under the head of Overdrafts, on page 3, is shown Meredith Contracting Company $16,439.59 and Meredith Con. Co. B $7,084.88.

Sheet 11 designated Notice to Officers and Directors under the head of requirements, among other things, contains the following:

Second. Excess loans amounting to $503,324.98 are held by your bank in violation of the law. You are hereby notified to reduce said loan to the legal limit within sixty days of the date hereof. L. L. Beye $32,000.00; Empire Gas & Fuel Company $65,697.02; Fidelity Refining Company $128,-263.49; C. W. Meredith Const. Co. $155,364.47; A. G. Williams $92,000.00; Mountain Iron Company $30,000.00.

[fol. 352] Fourth. There is some ninety thousand dollars worth of paper in your past due note case a part of which is far past due. This paper should be given your best attention and gotten into better condition.

Fifth. Overdrafts are very excessive and should be kept down. The account of Meredith Const. Co., shows a continuous overdraft. This account should be kept free from overdrafts. Give these accounts closer attention in the future and do not permit overdrafts to be carried longer than ten days from the commencement of the same.

Dated 9/20/20.

By Order of the Bank Commissioner of Kansas.

Will D. Kinnaman, Deputy Bank Commissioner.

We hereby acknowledge receipt of the Notice to Officers and Directors of which the above is a true copy and we do hereby agree to comply with the terms thereof and to notify the Bank Commissioner when the same has been done.

C. L. King, President. A. B. Ewing, Cashier. J. B. Adams, H. F. Ferry.

EXHIBIT 22

Exhibit 22 is the report of Will D. Kinnaman, Deputy Bank Commissioner and Examiner, made to the State Bank Commissioner, of an examination of the Butler County State Bank of El Dorado, Kansas, at the close of business March 22nd, 1920. The examination having been made on March 23rd, 1920. The report was admitted in evidence as against those parties signing it to the extent that it purports to constitute a restatement of the books of the bank (See Transcript 106).

[fol. 353] Sheet 1, among other things, under the head of Resources shows Overdrafts $23,434.41 and under the head of liabilities bills rediscount $180,714.92. Sheets 1, 2 and 3, are signed and sworn to by C. L. King, President. Sheet 11 designated Notice to Officers and Directors and under the head of Requirement among other things, contains the following:

Second. Excess loans amounting to $425,486.57 are held by your bank in violation of the banking laws. You are notified to reduce said loan to the legal limit within sixty days from the date heerof, E. J. Andrews $50,752.00; Noah Artz & Son $31,667.00; Fidelity Refining Company $98,-948.00; C. W. Meredith Cont. Company $95,366.23; A. G. Williams $43,249.81; I. Scrinopskie $39,170.00; Yingling Bros. $29,014.90.

Fourth. Collect, renew or charge off within ninety days paper listed under schedule B of this sheet. Total amount $43,281.75.

Fifth. Overdrafts are excessive Eliminate from your overdraft list and keep accounts free of overdrafts the following: C. W. Meredith Cont. Co. and C. W. Meredith Contr. Co. Act. B; The Palace; A. G. Williams; Crescent Laundry; Guy F. Heap; and other chronic overdrafts. Collect or charge off all overdrafts within ten days of commencement of same. To say the least the overdraft list would look better if none of the officers or employees names were listed.

Dated March 23rd, 1920.

By order of the Bank Commissioner of Kansas.

Will D. Kinnanman, Deputy Bank Commissioner.

We hereby acknowledge receipt of the Notice to Officers and Directors of which the above is a true copy and we do hereby agree to comply with the terms thereof and to notify [fol. 354] the Bank Commissioner when the same has been done.

C. L. King, President. A. B. Ewing, Cashier. J. B. Adams H. F. Ferry, Directors.

EXHIBIT 23

State of Kansas, Office of Bank Commissioner

STATE OF ILLINOIS,
St. Clair County, ss:

I, T. A. Kramer, the undersigned director of The Butler County State Bank of El Dorado, in the County of Butler in the State of Kansas, being a citizen and resident of the place and in the State as shown below opposite my name solemnly swear; I will support the Constitution of the United States and the Constitution of the State of Kansas, and that I will, so far as the duty devolves upon me, diligently and honestly administer the affairs of said bank; that I will not knowingly or willingly permit to be violated any of the provisions of the banking law of the State of Kansas; and I do solemnly swear that I am the owner, in good faith and in my own right, of five shares of the stock of said bank, being either subscribed by me or standing in my name on the books of said bank.

Name, residence, and Post Office address (original signatures necessary; do not omit):

T. A. Kramer, 1005 West Central Ave., El Dorado, Kansas.

Subscribed and sworn to before me this 20th day of January, 1923. Stella Burton, Notary Public. My commission expires June 7, 1924. (Seal.)

[fol. 355] NOTE.—Each director, when elected, must take the oath of office. It must be transmitted to the Bank Commissioner immediately after the election.

(Endorsed on back:) Oath of Directors of The Butler County State Bank of El Dorado, Kansas, 1923. Received Jan. 23, 1923. Commissioner. Topeka, Kan.

EXHIBIT 24

State of Kansas, Office of Bank Commissioner

Oath of Directors

STATE OF KANSAS,
Butler County, ss:

We, C. L. King, A. B. Ewing, T. A. Kramer, H. F. Ferry, and L. D. Hadley, the undersigned directors of the Butler County State Bank of El Dorado, in the county of Butler in the State of Kansas, being citizens and residents of the places and in the States as shown below opposite our names, do each for himself, solemnly swear; I will support the Constitution of the United States and the Constitution of the State of Kansas, and that I will, so far as the duty involves upon me, diligently and honestly administer the affairs of said bank; that I will not knowingly or willingly permit to be violated any of the provisions of the banking laws of the State of Kansas; and I do solemnly swear that I am the owner in good faith and in my own right, of five shares of the stock in said bank; being either subscribed by me or standing in my name on the books of said bank.

Name, residence, and Post Office address (original signature necessary; do not omit):

H. F. Ferry, El Dorado, Kansas. C. L. King, El Dorado, Kansas. L. D. Hadley, El Dorado Kansas. A. B. Ewing, El Dorado, Kansas.

[fol. 356] Subscribed and sworn to before me this 9th day of Jan., 1923. I. J. Quinn, Notary Public. My commission expires July 5, 1923. (Seal.)

NOTE.—Each director, when elected, must take the oath of office. It must be transmitted to the Bank Commissioner immediately after election.

(Endorsed on back:) Oath of Directors of The Butler County State Bank of El Dorado, Kansas, 1923. Received Jan. 10, 1923. Topeka, Kan.

EXHIBIT 25

Exhibit 25 is the Receiver's Official Statement of the Butler County State Bank on the 1st day of March, 1926, made to the State Bank Commissioner of the State of Kansas, by W. R. Childs, Assistant Receiver of the Butler County State Bank.

(See Transcript 165-166.)

Among other things, under the head of Resources it shows the loans and discounts of the bank to be $753,452.24 and bank building $69,504.35, overdrafts $20,902.79, Judgments $46,822.40.

EXHIBIT 26

Exhibit 26 is the statement of C. L. King, personal account, in the Butler County State Bank of El Dorado, consisting of 8 pages, and was offered in evidence as against the defendant C. L. King, (See Transcript 167-168).

This account commences November 7th, 1921, and ends March 29th, 1924.

[fol. 357] Among other things, it shows that from November 9th, 1921, to December 13th, 1921, Mr. King was overdrawn; That on April 10th 1922, his account was overdrawn $1,141.07; That on June 22nd, 1922 his account was overdrawn $655.93; That on November 1st, 1922 his account was overdrawn $1,368.59; That on January 2nd, 1923 his account was overdrawn $306.35; That on March 24th, 1923 his account was overdrawn $1,206.98; and that on March 29th, 1923 his account contained a balance of $51.92.

EXHIBIT 27

Exhibit 27 is the statement of the personal account of H. F. Ferry in the Butler County State Bank of El Dorado,

Kansas, consisting of 7 sheets and was offered in evidence as against the defendant H. F. Ferry (Transcript 169-170).

This account commences December 7th, 1921, on which date his account was overdrawn $55.04, it shows that on March 31st, 1922 it contained a balance of $1,052.15; that on December 30th, 1922, it contained a balance of $1,102.04; on March 27th, 1923, it shows that his account was overdrawn $78.80 and that one March, 1923 the account contained a balance of $1.20.

EXHIBIT 28

Exhibit 28 consisting of six sheets is the ledger sheet or personal account of A. B. Ewing in the Butler County State Bank of El Dorado, Kansas (Transcript 171-172).

This ledger sheet or account shows that it started December 9th, 1921; That on March 1st, 1923, it was overdrawn $41.60; and that on March 28th, 1923, the account contained a balance of $8.47.

[fol. 358] EXHIBIT 29

Exhibit 29 is the ledger sheet of the Butler County State Bank, showing the personal account of L. D. Hadley in that Bank. It consists of 4 sheets. (Transcript 173-174).

This account shows that it was started December 12th, 1921, with a balance of $617.11; and that on March 5th, 1923 it had a balance of $102.15; and that on March 27th, 1923, it contained a balance of $7.99.

EXHIBIT 31

Exhibit 31 is the ledger sheet of the Butler County State Bank of El Dorado, Kansas, showing the personal account of T. A. Kramer, consisting of 5 sheets (Transcript, 174-175).

This ledger sheet shows that Mr. Kramer's personal account on December 30th, 1920, contained a balance of $2,465.99 and that on January 22nd, 1923, it contained a balance of $2,805.71 and that on March 20th, 1923, it contained a balance of $1,210.69, that being the last item shown on the account.

EXHIBIT 32

Exhibit 32 is the ledger sheet of the Butler County State Bank showing the personal account of E. F. Adams, consisting of 6 sheets. It shows her account on December 27th, 1921 to have had $2,295.54 balance and on March 29th, 1923 to have had a balance of $1,588.28. An objection was sustained to Exhibit 32 (See Transcript 175).

[fol. 359] EXHIBITS "A," "B," "C," "D," "E," and "F"

These exhibits constitute the minutes of the meeting of the Board of Directors of the Butler County State Bank of El Dorado, Kansas, held on June 30th, 1921, and show the statement of the condition of such bank as submitted by the cashier.

The minutes show the following persons were present: Directors, T. A. Kramer, C. L. King, A. B. Ewing, H. F. Ferry, and L. D. Hadley.

Among other things they show as follows: Overdrafts, $2,268.40.

Among other things loans to stockholders as follows:

Note of A. B. Ewing dated 3/11/21, due 9/1/21 $3,500.00, personal security.

Note of A. B. Ewing 6/26/21, due 9/26/21 $2,000.00, personal security.

Note of C. L. King dated 10/6/19, due on demand $1,500.00, personal security.

Note of C. L. King dated 10/21/20, due on demand $2,500.00, personal security.

Note of C. L. King dated 1/22/21, due on demand $1,500.00, personal security.

Note of C. L. King dated 3/15/21, 6/15/21, $2,000.00, personal security.

Note of C. L. King dated 6/30/21, due on demand $800.00, personal security.

Note of C. L. King and J. B. Adams, dated 10/2/20, due 4/2/21, $10,000.00, personal security.

These minutes show among the note- ordered charged to profit and loss a note of C. W. Meredith Contracting Company amount $6,440.00.

The minutes show the following excess loans:

These minutes show among the note ordered charged to profit and loss a note of C. W. Meredith Contracting Company amount $6,440.00.

Date	Due	Name of borrower	Amount	Security
10/30/20	6 mos	E. J. Andrews	$838.58	Mortgage
11/26/20	6 mos	do	16,836.82	do.
2/ 1/21	6 mos	do	19,775.95	do.
5/18/21	1/19/21	do	12,242.40	do.
5/ 8/21	90 days	Noah Artz & Son	15,000.00	do.
11/15/21	demand	do	1,380.79	do.
11/ 8/20	6 mos	do	13,771.20	do.
3/ 9/21	1 day	L. L. Beye	15,000.00	Contract
3/ 5/21	1 day	do	4,000.00	do.
3/ 5/21	6 mos	do	27,000.00	do.
3/ 5/21	6 mos	do	27,000.00	do.
11/ 1/20	demand	Empire Gas & Fuel Co.	11,697.02	
5/23/21	90 days	do	25,000.00	
[fol. 360]				
6/ 2/21	30 days	do	12,500.00	
4/13/21		Eldorado Hotel & Th Co	30,000.00	1st Mtg Bonds
10/25/18	Installments	Fidelity Refining Co	3,816.00	Assignment
do.	do	do	do.	do.
do.	do	do	do.	do.
do.	do	do	do.	do.
do.	do	do	do.	do.
do.	do	do	do.	do.
do.	do	do	do.	do.
do.	do	do	do.	do.
do.	do	do	do.	do.
do.	do	do	do.	do.
do.	do	do	do.	do.
do.	do	do	do.	do.
do.	do	do	do.	do.
do.	do	do	do.	do.
do.	do	do	do.	do.
6/24/20	6 mos	do	22,000.00	do.
9/25/20	3 mos	do	23,558.60	do.
11/18/20	demand	do	7,000.00	do.
12/31/20	do	do	2,200.00	do.
9/24/20	3 mos	do	10,000.00	do.
6/16/21	60 days	do	7,620.00	do.
4/23/21	7/4/21	J. G. Robinson	5,000.00	Stock
1/17/21	8/16/21	do	1,737.41	do.
6/22/21	80 days	L. M. Robinson-W. P. Knox	5,000.00	do.
4/23/21	7/9/21	L. M. Robinson	4,400.00	do.
6/17/20	1/10/21	do	11,530.00	do.
4/23/21	7/26/21	Mid Co Packer Co	2,000.00	Stock
4/23/21	7/10/21	do	2,200.00	do.
4/23/21	7/15/21	do	9,000.00	do.
4/23/21	8/16/21	do	3,000.00	do.
4/23/21	7/20/21	do	3,000.00	do.
6/27/21	6 mos	do	9,360.00	do.
1/ 6/21	3 mos	J. E. Sharp	10,900.00	War. Deed
12/27/20	2/14/21	do	22,465.53	Chat. Mtg.
6/ 8/21	8/22/21	A. G. Williams	20,000.00	Contract
6/ 8/21	8/22/21	do	20,000.00	do.
6/ 8/21	8/22/21	do	20,000.00	do.
6/ 8/21	8/8/21	do	15,000.00	do.
6/ 8/21	8/30/21	do	10,000.00	do.
6/ 8/21	8/30/21	do	9,500.00	do.
6/21/21	City War.	City of Florence, Ks C. W. Meredity Cont. Co.	9,317.81	City War.

fol. 361]

Date	Due	Name of borrower	Amount	Security
6/21/21	City War.	City of Florence, Ks		
		C. W. Meredity Cont. Co.	14,022.90	City War.
6/ 7/21	do....	do.....	6,030.00	do.
6/ 7/21	do....	do.....	16,124.65	do.
6/ 7/21	do....	F. E. Devlin do	117.58	do.
6/ 7/21	do....	do.....	400.00	do.
5/16/21	do....	C. W. Meredity Cont Co.	8,061.78	do.
6/22/21	6 mos.....	do.....	15,638.08	Contract
10/15/17	10/15/20	do.....	5,400.00	do.
10/15/19	8/15/20...	do.....	6,400.00	do.
6/22/20	6 mos.....	do.....	20,000.00	do.
6/22/20	6 mos.....	do.....	20,000.00	do.
6/22/20	6 mos.....	do.....	20,000.00	do.
6/22/20	6 mos.....	do.....	20,000.00	do.
7/21/20	3 mos.....	do.....	10,000.00	do.
11/20/20	demand....	do.....	25,000.00	do.
8/26/20	do....	do.....	7,000.00	do.
12/22/20	6 mos.....	Ed. H. Meredith.....	25,656.74	Stock
			$762,423.24	

These minutes further show that the salary of C. L. King, as president of the bank was increased from $225.00 a month to $500.00 a month, starting July 1st 1921, and the minutes are signed A. B. Ewing, Secy. (Transcript 37).

[fol. 362] EXHIBITS 44, 45 AND 46

Exhibit 44 was the petition for the probate of the last will and testament of T. A. Kramer, filed in the Probate Court of Butler County, Kansas, such will being dated October 4th, 1921.

Exhibit 45 is the deposition of Bruce A. Campbell and the deposition of R. E. Costello, witnesses to the Codicil to the last will and testament of T. A. Kramer, deceased (Transcript 291).

These depositions are identically alike and state in substance, under oath, that the deposer is one of the subscribing witnesses to the codicil to the last will and testament of T. A. Kramer, dated June 20th, 1923. That the deposer heard the testator declare the same to be his last will and testament and that the testator was of full age, sound mind and memory, and that they recognized the handwriting of the testator to such codicil.

Exhibit 46 is the codicil to the last will and testament of T. A. Kramer and is dated June 20th, 1923 and bears the signature of T. A. Kramer (Transcript 291).

Defendant's Exhibits

Exhibit 33

State of Kansas Banking Department

March 31, 1921.

C. L. King, President, the Butler County State Bank, El Dorado, Kansas.

Dear Sir: Please accept my congratulations upon the success of the way you are handling the affairs of your [fol. 363] bank since the recent unfortunate affair. I hope that you will soon be able to report to this department.

This is our last day in the department but you will need have no fear because you can handle your own bank I am sure.

Please accept my appreciation, also for your generous support and help to this department during our term as Bank Commissioner.

With best wishes, I am,

Respectfully yours, Walter E. Wilson, Bank Commissioner.

Exhibit 36

Exhibit 36 is an inventory, or rather a copy of an inventory, of the assets of the Fidelity Refining Company which was prepared by A. H. Stone, Receiver for Fidelity Refining Company, the original of which inventory was filed in the United States District Court for the District of Kansas (Transcript 205-206).

EXHIBIT 37

A. H. Stone, President; W. H. O'dell, Sec.-Treas.; W. H. Bunting, Vice-President

Fidelity Refining Company, Bristow, Oklahoma; El Dorado Kansas

Gasoline and Other Petroleum Product

Bristow, Oklahoma, December 10th, 1918.

Butler County State Bank, El Dorado, Kansas:
Attention Mr. King, Pres.

As per the writer's promise when in your city I am herewith enclosing you a statement of the assets and liabilities [fol. 364] of the Fidelity Refining Company as of November 11th, 1918.

I might say a word in our behalf regarding said statement: The oil properties listed herein are worth conservatively $75,000.00 to $100,000.00 more than priced figuring on today's market. The refinery is easily worth twice the amount shown.

We will have statements out again from time to time as we are continually adding to our plant and consequently our statement is changing almost daily and we will be glad to furnish you copy every time we take a statement from our books or at any other time you see fit to call for one.

Thanking you for past friendly business relations, I beg to remain,

Very truly yours, A. H. Stone.

Financial Statement

Fidelity Refining Company

Nov. 11th, 1918.

Capital Stock Authorized: $150,000.00.
Stock Issued at Par Value, $1.00 per Share, $150,000.00.
Total Assets: 412,698.88.
Total Liabilities: 412,698.88.
Daily Capacity of Refinery: 2,500 barrels.
Daily Production from Oil Properties owned: Approximately 400 Barrels.

Resources

Refinery	$116,247.66
Oil Property	190,448.87
Oil Property	62,500.00
Pipe Line	12,586.32
[fol. 365] Stock in Escrow	5,000.00
Bills Receivable	3,016.89
Tankage (Chicago)	1,000.00
Site	3,930.00
Oil Leases	3,700.00
Tools and Equipment	318.65
Bank	1,500.00
Oil in Storage	12,500.00
Total	412,698.88

Liabilities

Capital Stock	$150,000.00
Oil Properties	192,500.00
Owe Banks	38,000.00
Owe others	19,698.88
Surplus	12,500.00
Total	$412,698.88

Itemized Liability Statement for Merchandise

Atlas Supply Company	$14,986 24
Long Bell Lumber Company	2,855 88
United Iron Works Company	525 00
Southwest Building Supply Company	447 95
Page Chemical Company	316 54
Santa Fe Railroad	204 14
Corken Machinery Company	171 00
The Eagle-Picher Lead Company	105 89
The Patterson-Sargent Company	16 25
Johns-Manville Company	69 99
Total	$19,698 88

[fol. 366] EXHIBIT 38

Exhibit 38 was a contract entered into between A. H. Stone, as receiver of the Fidelity Refining Company, and one W. D. Richardson dated August 28th, 1922, for the sale of the Fidelity Refining Company, an objection was sustained to the admission of the contract in evidence (Transcript 208-209).

EXHIBITS 39, 40 AND 41

Exhibit 39 is a note for $1,000.00 dated June 27th, 1922, maturity date July 15th, 1922, signed by L. M. Robinson and Exhibit 40 is a note dated June 27th, 1922, due July 9th, 1922 for the sum of $4,400.00 to the Butler County State Bank signed by L. M. Robinson and Exhibit 41 is a note dated August 22nd, 1921 due January 10th, 1922 for $11,530.00 payable to the Butler County State Bank, signed by L. M. Robinson. An objection was sustained to the admission of these exhibits in evidence (Transcript 226-28).

EXHIBITS 42 AND 43

Exhibits 42 and 43 are chattel mortgages, Exhibit 42 being a chattel mortgage covering a great amount of personal property consisting of tools, machinery and equipment for grading and road building purposes, a number of trucks, scrapers and plows, horses and mules and other equipment executed by the C. W. Meredith Contracting Company unto the Butler County State Bank of El Dorado, Kansas, to secure the payment of $115,000.00 evidenced by six promissory notes, the mortgage being dated August 16th, 1922.

Exhibit 43 is a chattel mortgage executed by the C. W. Meredith Contracting Company to the Butler County State [fol. 367] Bank of El Dorado, Kansas, covering sixteen dump wagons, twelve sets of new harness, four fresnoes and a frame building used as a hay barn. This mortgage is given to secure the payment of the sum of $7,600.00 and is dated January 19th, 1923 (see Transcript 234).

INSTRUCTIONS REQUESTED BY PLAINTIFF—Filed March 19, 1926

Omitting the caption and signatures the plaintiff requested the court to give each and all of the following instructions to the jury:

Instructions Requested by the Plaintiff

Comes now the plaintiff and submits to the court the following instructions numbered from 1 to 22, both inclusive and requests the court to give each and all of them to the jury as the law of the case.

1. You are instructed that the plaintiff in this case for his cause of action against the defendants and each of them alleges in substance as follows:

That on the 30th day of March, 1923, and for a long time prior thereto the Butler County State Bank of El Dorado, Kansas, was a banking corporation organized and doing business at El Dorado, Kansas, as a state bank under the laws of the State of Kansas, and that on said 30th day of March, 1923, and for more than three months prior thereto the defendant, C. L. King, was and had been a stockholder officer, director and president of said bank; that the defendant, H. F. Ferry, on said 30th day of March, 1923, and for more than three months prior thereto was and had been a stockholder, officer, director, vice president and cashier of said bank; that the defendant, L. D. Hadley, on said 30th [fol. 368] day of March, 1923, and for more than three months prior thereto was and had been a stockholder, officer, director and assistant cashier of said bank; that on said 30th day of March, 1923, and for more than three months prior thereto the defendants, A. B. Ewing, G. W. Lyon and T. A. Kramer were stockholders and directors of said bank; and that on said 30th day of March, 1923, and for more than two years prior thereto the defendant, E. F. Adams, had held herself out to be and represented herself to be a vice president and director of said bank to the depositors and customers of said bank and knowingly permitted and allowed herself to be so held out and so represented to be such director and such vice-president by the said bank di-

rectors and officers of said bank by allowing and permitting her name to be printed on such stationery as was used by such bank directors and officers, as vice-president and director of such bank, and by allowing and knowingly permitting her name to be listed by the directors and officers of said bank upon the books and records of said bank as vice-president and director of said bank, and by advertising, and allowing and permitting advertisements to be carried in various bank directories and bank registers among which were and are Rand & McNally's Bank Directories and Bank Register for the years 1921 and 1922 and 1923, and American Bank Reporter for the years 1921 and 1922.

Plaintiff further alleges that said defendants and each of them as such officers and directors actively participated in the management and affairs of said bank.

Plaintiff further alleges that on the 8th day of March, 1923 he had on deposit in said bank the sum of $2,168.85, in a checking account, and that on said 8th day of March, 1923, [fol. 369] he deposited in said account in said bank the sum of $40,000.00, and on said date checked out of said account the sum of $17,751.36, and that on the 12th day of March, 1923, he deposited in said account in said bank the further sum of $1,411.17, and that on the 13th day of March, 1923, he deposited in said account in said bank the further sum of $1,600.00, and that on the 16th day of March, 1923, he checked out of said bank the sum of $8,294.35, and that on the 17th day of March, 1923, he checked out of said bank the sum of $23.75, and that on the 26th day of March, 1923, he deposited in said bank account in said bank the sum of $3,615.60, and that said banking institution received such deposits and each of them, and the same were credited to the plaintiff's account in said bank, and said bank thereby became and was indebted to the plaintiff to the amount of said deposits so made.

Plaintiff further alleges that at the time he deposited said sums in said bank the said bank was insolvent and in failing circumstances and had been insolvent and in failing circumstances for more than six months prior to the 30th day of March, 1923, and that the said defendants and each of them knew at the time said deposits were made and for more than six months prior to the 30th day of March, 1923, had known that said bank was in said condition, or by an ex-

amination into the affairs of said bank which it was their duty to make they could have ascertained such fact, and the plaintiff had no knowledge of the actual condition of said bank until the same was closed.

Plaintiff further alleges that the defendants and each of them notwithstanding their knowledge assented to the reception of such deposits by such bank.

[fol. 370] The plaintiff further alleges that on the 30th day of March, 1923, the Butler County State Bank of El Dorado, Kansas, was closed by the State Bank Commissioner of the State of Kansas, and on that date suspended of payment of its obligations and that on said 30th day of March, 1923, there remained of the deposits so made in said bank the sum of $22,726.16, and that said sum is due to the plaintiff from the defendants and each of them with interest thereon at 6% from the 30th day of March, 1923.

The plaintiff further alleges that since the commencement of this action defendant T. A. Kramer, died and that one C. L. Harris was by the Probate Court of Butler County, Kansas, duly appointed the executor of the last will and testament of said T. A. Kramer, and that said C. L. Harris duly qualified and is now the duly and regularly appointed, qualified and acting executor of said last will and testament of said T. A. Kramer.

Plaintiff asks judgment against the defendants and each of them for the said sum of $22,726.16, together with 6% interest thereon from the 30th day of March, 1923, and for the costs of the action.

II

You are instructed that Section 9-163 Revised Statutes of Kansas of 1923 reads as follows:

Transactions During Insolvency.—It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution, to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made [fol. 371] the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and if possible, know its condition. And upon failure of any such person to discharge such duty, he shall,

for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted; Provided, any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities.

III

You are instructed that Section 9-164, Revised Statutes of Kansas, 1923, reads as follows:

Proceedings under Foregoing Section.—In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents, or managers of any such banking intsitutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith.

[fol. 372]

IV

You are instructed that Section 9-166, Revised Statutes of Kansas, 1923, reads as follows:

Act Enforced Against Executors and Administrators.—This act shall extend to and may be enforced by and against executors and administrators of such deceased officers, agents and managers.

V

You are instructed that Section 9-133, Revised Statutes of Kansas, 1923, reads as follows:

When Bank Deemed Insolvent.—A bank shall be deemed to be insolvent—first, when the actual cash market value of its assets is insufficient to pay its liabilities; Second, when it is unable to meet the demands of its creditors in the usual

and customary manner; Third, when it shall fail to make good its reserve as required by law.

VI

You are instructed that under the law it was the positive duty of the defendant and each of them, to examine into the affairs of the bank; to examine the books, records, notes, securities, obligations and assets of the bank and to keep themselves as fully informed as to the actual condition of the bank as it was possible from such examination to do. It was the duty of the defendants, and each of them, to make such examination as often and with such a degree of thoroughness and accuracy as would with reasonable certainty acquaint them with the condition of the bank, and if from such examination so made they knew that such bank was insolvent, or in failing circumstances, if, in fact, such [fol. 373] bank was insolvent or in failing circumstances at the time of the making of the deposits, or any of them, by the plaintiff, or if from the making of such examination the defendants knew, or should have known, that said bank was insolvent and in failing condition, then the defendants would be liable to the plaintiff for the amount of the deposits made when said bank was insolvent or in failing condition.

7

You are instructed that in order to assent to the reception of deposits it is not necessary that the deposit at the time it is made in the bank by the depositor be actually received by the officer, but it is sufficient to constitute assent to the reception of such deposit if the officers sought to be charged knew that said bank was being kept open for business, that deposits were being made from time to time and that such bank was transacting the ordinary business of a banking institution.

8

You are instructed that the duty imposed upon the officers and directors of a bank regards the examination of the affairs and condition of the bank and if possible to know its condition, is obligatory, and on failure to discharge such duty by any such officer or director, he is presumed to know the condition of the bank as regards its solvency or insolvency, and as regards whether it is in a failing condition

or not, and therefore, in this case, if you find from the evidence that the defendant, Hadley, and the defendant, Kramer, were officers or directors of the bank and that the deposits alleged by the plaintiff to have been made by the [fol. 374] plaintiff *to have been made by the plaintiff* in the bank, were made, and that the defendant, Hadley, assented to the reception of such deposits, and that at such time said bank was insolvent or in a failing condition, then and in that event your verdict should be in favor of the plaintiff, as against the defendant, Hadley.

9

You are instructed that if you believe by a preponderance of the evidence that the Butler County State Bank of El Dorado, Kansas, was insolvent on the dates on which plaintiff claims to have made his deposits, and if you further find by a preponderance of the evidence that such deposits were actually made, and if you further find by a preponderance of the evidence that the defendants were directors of said bank, or were officers of said bank at said time, then and in that event you are instructed that the insolvency or failing condition of said bank is prima facie evidence of knowledge on the part of such defendants as to its insolvency or failing condition, and of the assenting to the reception of such deposits.

10

You are instructed that the purpose of Sections 9-163-164, Revised Statutes of Kansas of 1923 are to insure constant and vigilant watch over the conduct of the bank affairs, and the directors and officers named in such statutes are charged with knowledge of and they are presumed to know the general condition and management of the bank, its condition as to solvency or insolvency, whether it is in a failing condition or not, and to know everything of im- [fol. 375] portance that occurs in the bank at the time it occurs, or within a reasonable time thereafter, which they by a careful, prudent and frequent examination into the affairs of the bank could possibly ascertain.

Martin v. Webb, 110 U. S. 7.

Ellis et al. v. H. P. Gates Mercantile Co., 60 Southern, 649.

11

The court instructs the jury that if you believe from the evidence that the defendants as such directors or officers, by the exercise of such reasonable care and diligence in the performance of their duty as such officers or directors as a person of ordinary prudence would have exercised under like circumstances, could have known of the unsafe and insolvent condition of the bank at the time charged, but did not actually know of such condition, then the defendants would be charged with such knowledge of such unsafe and insolvent condition of the bank, and the fact that they did actually know of the unsafe and insolvent condition of the bank in such case would constitute no defense in this case.

12

You are instructed that in this case it is admitted that the Butler County State Bank of El Dorado, Kansas at all of the times mentioned in the plaintiff's amended petition was and is a duly and legally organized and existing banking corporation and was doing business at El Dorado, Kansas at all the times mentioned in the plaintiff's amended petition.

[fol. 376] 13

You are instructed that it is admitted in this case that the defendant, C. L. King, at all the times mentioned in the plaintiff's amended petition was a director in said bank and the president of said bank; and that it is admitted that the defendant, H. F. Ferry, at all the times mentioned in the plainiff's amended petition was a director of said bank; and that it as admitted that the defendant A. B. Ewing, at all the times mentioned in the plaintiff's amended petition, was a director of said bank; and that it is admitted that since the — day of January, 1922, the defendant, Ferry, was the vice president and cashier of said bank.

14

You are instructed that if a person allows and permits his name to be carried upon the books and records of a banking institution as a director or as an officer of said

bank and uses his name, or permits his name to be used on banking communications sent from such bank to the state bank commissioner's office of the State of Kansas, that then and in that event such person is estopped to deny that he is a director or such officer of such bank.

15

You are instructed that the duty imposed upon the officers and directors of a bank as regards the examination of the affairs and condition of the bank and if possible to know its condition, is obligatory, and on failure to discharge such duty by any such officer or director, he is presumed to know the condition of the bank as regards its solvency or insolvency, and as regards whether it is in a failing condition [fol. 377] or not, and, therefore, in this case, if you find from the evidence that the defendant, Kramer, and the defendant, Hadley, were officers or directors of the bank, and that the deposits alleged by the plaintiff to have been made by the plaintiff in the bank, were made, and that the defendant Kramer, assented to the reception of such deposits, and that at such time said bank was insolvent or in a failing condition, then and in that event your verdict should be in favor of the plaintiff, as against the defendant, Kramer.

16

You are instructed that in this case it is immaterial what form or species constituted the deposits claimed to have been made by the plaintiff, that is to say that the law does not require that such deposits be made in actual money, but it is sufficient if the deposit is made either in money or by check, or draft or money order, provided that the depositor is given credit upon the books of the bank with the amount of the deposit.

17

You are instructed that where the officers and directors of a banking institution keep such banking institution open for business on business days and on such days transact the usual ordinary business done at banking institutions and

during which time dep its are made at such bank and received, that then and in that event the officers and directors of such bank are in law presumed to have assented to the reception of deposits made under such circumstances, so that in this case you believe from the evidence that the Butler County State Bank of El Dorado, Kansas prior to the 29th day of March, 1923 had been kept open for business transaction and general banking business on the days and at the time on which plaintiff claims to have [fol. 378] made the deposits in said bank, then and in that event the defendants would be presumed in law to have assented to the reception of the deposits so made.

18

You are instructed that if you believe from the evidence and by a preponderance thereof that at the times and on the days when the deposits of plaintiff were made in said bank that said bank was insolvent or in a failing condition that such insolvency or such failing condition of such bank is prima facie evidence of the knowledge of the defendants of such insolvency or such failing circumstances of such bank on the part of the defendants and is prima facie evidence of the assenting to the reception of such deposits by the defendants.

19

You are instructed that if in this case you believe from the evidence and by a preponderance thereof that the defendants or any of them failed and neglected to examine into the affairs of said bank with such frequency and care and caution as it was their duty to do under the law as heretofore explained to you in these instructions, that then and in that event such defendants so failing to so examine said bank with such frequency and such degree of care and caution are charged and held to have had knowledge of the insolvent condition of said bank, or the failing circumstances of said bank, if it was insolvent, or if it was in failing circumstances, and in that event they would be liable to the plaintiff for the deposits made under such circumstances.

[fol. 379] 20

You are instructed that it is the duty of a director or officer of a bank, when he knows his bank to be in failing condition or insolvent, or when by such an examination of the affairs of the bank as he is in law required to make, he could ascertain that.

21

You are instructed that the fact, if it be a fact, that the plaintiff has received a guaranty fund certificate on the State Bank Guaranty Fund of the State of Kansas for the amount of his deposit in the Butler County State Bank of El Dorado, at the time it closed its doors does not in any way prejudice his right of recovery as against the defendants in this case, and you are instructed to entirely disregard the fact, if it be a fact, that the plaintiff is the holder of such certificate, in determining, whether under the evidence and law of this case, he is entitled to recover against the defendants.

22

You are instructed that a bank is in "failing condition" when in a state of uncertainty whether it will be able to sustain itself, depending on favorable or unfavorable contingencies, which in the course of business may occur, and over which its officers have no control.

Morse on Banks & Banking 1034.
White v. Poole, 272 S. W. 1025.

[File endorsement omitted.]

[fol. 380] Instructions Requested by Defendants—Filed March 19, 1926

Instructions Requested by the Defendant C. L. King

Omitting the caption and signatures the defendant, C. L. King requested the court to give the following instructions to the jury:

The court instructs you that under the evidence in this case there were no false entries made in the books of the

bank, and that the books of the bank on their face, showed the bank to be solvent; that is the books of the bank showed that the bank had assets which, at their face value, exceeding the indebtedness of said bank.

Instructions Requested by Defendant L. D. Hadley

Omitting the caption and signatures the defendant requested the court to give the following instructions to the jury:

1

The defendant, L. D. Hadley, respectfully requests the court to instruct the jury in the above entitled cause to render a verdict in favor of the defendant, L. D. Hadley.

2

The defendant, L. D. Hadley, further requests the court to give each and every one of the instructions requested by counsel for the other defendants except those specifically designed and worded to cover separate and distinct defenses not claimed by the defendant, L. D. Hadley, said instructions requested by the other defendants having heretofore been reduced to writing, numbered and signed by attorneys for the other defendants and delivered to the court and same are hereby made a part of the request of the defendant, L. D. Hadley, as if fully written out, numbered and placed herein.

[fol. 381] Instructions Requested by Defendant C. L. Harris, as Executor

Omitting the signatures and caption the defendant C. L. Harris requested the court to give the following instructions to the jury:

Instructions Requested by the Defendant, C. L. Harris, as Executor

You are instructed that under the law and the evidence in this case your verdict must be for the defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, and against the plaintiff herein.

You are instructed that before you can find for the plaintiff in this action and against the defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, you must believe from a preponderance of the evidence that T. A. Kramer, at the time of the reception of the deposits in question, was a director of The Butler County State Bank and assented to such deposits, and at the time of the reception of the deposits he had knowledge that The Butler County State Bank was in an insolvent condition, if you find as a fact that the bank was insolvent as such term is defined in the instructions herein given you.

If you find that The Butler County State Bank was insolvent at the time of the reception of the deposits in question, you are instructed that such fact is prima facie evidence that the officers and directors of said bank had, at the time of the reception of such deposits, knowledge of such insolvency and assented to such deposits, you are further instructed, however, that this does not mean that you must from this find as a fact that said officers and directors did have knowledge of the insolvent condition of [fol. 382] said bank, and did with such knowledge assent to such deposits, but you must find from all of the evidence, including the fact that the bank was insolvent at the time of the reception of such deposits, if you find it was so insolvent, that the said officers and directors had knowledge of the insolvency of the bank at said time, and had knowledge of the reception of the deposits in question, and did assent to the reception of such deposits.

While the statute of the State of Kansas, Section 9-164, Revised Statutes of 1923, provides that the fact that a banking institution was insolvent or in failing circumstances at the time of the reception of the deposits claimed to have been made, shall be prima facie evidence of knowledge on the part of the officers and directors of said bank of such insolvent condition, and prima facie evidence of the assent on the part of such officers and directors to the reception of such deposits, the statute does not mean that proof of insolvency alone necessarily establishes liability on the part of such officers and directors, but means that while such fact alone would, in the absence of evidence to the contrary, be sufficient to sustain verdict in favor of the plaintiff, the jury must from all of the evidence, including the fact of

insolvency, if you find the bank was insolvent, determine whether the defendants, or any of them, at the time of the reception of the deposits involved, had knowledge of the insolvent condition of the bank and gave assent to the reception of such deposits.

The term "assent" is defined as "the act of the mind in admitting or agreeing to anything" and one who assents to the doing of a thing is one who has knowledge of the thing to be done, and agrees to its being done, and gives permission for the doing of the act.

[fol. 383] There can be no assent without knowledge, and before you can find in favor of the plaintiff in this action and against the defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, you must believe from a preponderance of the evidence not only that the said T. A. Kramer was a director of said bank and had knowledge of the insolvent condition of the bank, but that he knew of the receipt of the deposits and assented thereto.

The term "assent" implies not only that the person has knowledge of the act, but that after obtaining such knowledge he gives his permission to the doing of the act, and, as used in the statute heretofore quoted, it also means that knowing the insolvent condition of the bank, and having knowledge that the deposits were about to be made, the officers permitted such deposits to be made. The term "assent" implies an affirmative action of some sort as distinguished from mere silence and inattention. The word "assent" as used in this statute, is equivalent in meaning to the word or term "authorized."

You are further instructed that the defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, has filed a separate answer in which, among other things, he sets out as a defense that the said T. A. Kramer "prior to the 10th day of July, 1922, and about the — day of August, 1918, lived in the State of California, and on said last mentioned date and while still in California was taken sick with obstruction of the bowels, and was compelled to and did undergo a severe surgical abdominal operation, from the result of which he never fully recovered, and on or about the — day of May, 1920, he returned to El Dorado, Kansas, where he was again com-

pelled by an aggravated recurrence of said trouble to [fol. 384] undergo another serious abdominal operation, and was by reason thereof unable to attend to any business, and was confined to the hospital where the operation was performed for a period of about three weeks, and after his discharge from the hospital was sick and enfeebled by reason of such condition, and never fully recovered therefrom. That on or about the 10th day of July, 1922, being still enfeebled and in poor health, he left El Dorado on a trip for the purpose of rest and recuperation, and went to East St. Louis, Illinois, where he remained with his brother, R. J. Kramer, until July 23rd, 1922, when, still seeking rest and recuperation, he left with his brother, J. H. Kramer, for an Eastern trip and on August 15th, 1922, when near the City of Boston, Massachusetts, he had an attack of complete bowel obstruction which entirely prevented the passage of fecal matter through the bowels, and was immediately taken to the Commonwealth avenue Hospital and placed in charge of competent surgeons, and on August 16th, 1922, he underwent a surgical operation for this trouble which was performed by Dr. Henry M. Chase of Boston. His abdomen was opened and it was found that the small intestines were completely obstructed by a large number of adhesions, and that the small intestines were ruptured and it was impossible to release all the adhesions. That the rupture of the small intestines never healed but remained open during the remainder of his life, and the incision in his abdomen made in such operation remained open during the rest of his life. That for a time after said operation it was impossible for him to take nourishment in the usual way, and it became necessary to give him nourishment through the opening in the bowels.

"That from the 16th day of August, 1922, until the time of his death, which occurred July 23rd, 1923, he had what [fol. 385] is known as a fecal fistula at the place where the incision was made for the operation, and during all the remainder of his life fecal matter from the small intestines constantly passed from the opening and inflamed the wound and flesh about the wound, and caused him great and constant pain and suf-ering. For some time after said operation he was sick and hovered between life and death with little hope of recovery, and afterwards, and on September

4th, 1922, his condition became so serious that it became necessary to perform another abdominal operation, and such operation was performed and restrictions of the bowels at different places were removed so far as it was possible to remove the same, but it was impossible to remove all of such restrictions. In this operation another opening was made through the adbominal walls over the cecem in the illic cecal region. That on account of this weakened physical condition it was impossible at this operation to give him an anesthetic, and in the performance of this operation a local anesthetic, called novocain, was used. After this operation he remained very sick and weak for more than a month, but finally gained sufficient strength so that by the middle of October, 1922, he was able to sit in a chair and move about the room without assistance.

"That on or about the first day of November, 1922, while he was still suffering greatly, it was determined best to remove him from said hospital and to take him to East St. Louis, Illinois to the home of his brother, R. J. Kramer, where he might be among his relatives, and where he might receive and could receive and would receive the personal care and attention which he required.

"That during his trip from Boston to East St. Louis he had to remain in his berth in the drawing room under the constant care of his nurse. That after he arrived at East [fol. 386] St. Louis he regained sufficient strength to enable him to walk about a little in the room, but this lasted for only two or three days. That he remained in East St. Louis until he died there on the 23rd day of July, 1923. That during all the time he was in East St. Louis, except for the period of two or three days above mentioned, he was confined to his bed, except for short periods during which he was able to sit up in his chair when placed therein by his attendant.

"That during all the time from the first operation until the time of his death he was under the care of surgeons and physicians and two nurses.

"That about the middle of December, 1922, it became apparent to his physicians that another operation was necessary, and he was thereupon removed to the Deaconess

Hospital in East St. Louis, and on December 20, 1922, another abdominal operation was performed, to-wit: The abdomen was opened at the outer border of the left rectus muscle, and the small intestine was anastomosed with the large intestine, and it was then discovered t.. it was impossible to release or remove all the adhesions binding the small intestines. That after this operation his condition did not improve, and the fistula before mentioned did not heal. That he remained at said hospital about a month, when he was again taken back to the home of his brother in East St. Louis, where his condition gradually grew worse until the date of his death.

"That from the time of his first operation until the time of his death, by reason of his sickness, suffering and physical condition he was unable to attend to any business of importance. That he suffered all the time intense and severe pain. That by reason of his condition he was unable to return to El Dorado at any time from the date of his first [fol. 387] operation, on August 16th, 1922. That his suffering was so intense, his physical condition of such a character and nature and so affected him that it was impossible for him to direct his mind for any length of time to any business matter, or to give any attention to any business affairs at any time, and he was unable to concentrate his mind for any length of time on any of his affairs.

"That by reason of the facts and circumstances above set forth it was impossible for him to give any attention to the affairs of said Butler County State Bank, and during all of said period he had no access to the books and records of said bank and was in no condition physically or mentally to make any examination of the business or the condition of said bank, and it was impossible for him to assent to the acceptance of any deposits in said bank. That during all the period of his illness as above described he was constantly attended by his brothers and their families, and acting under the advice of his physicians all matters of business were kept from him so far as possible so as to prevent him from worrying over the same and injurying his health thereby. That it would have been impossible for him to give any serious attention or consideration to business matters without seriously injuring his health and shortening his life."

You are instructed that if you believe from the evidence that the said T. A. Kramer was in the condition of health as set out in said paragraph five of the answer of defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, then the said T. A. Kramer was not required to resign and was not called upon, on account of such sickness, to retire from the board of directors of said The Butler County State Bank, if you find from the [fol. 388] evidence that he was such director, and his failure to do so while in the condition of health described in said paragraph five of said answer hereinbefore referred to, if you find he was in such condition, would not make him be held, as a matter of law, to have assented to the reception of the deposits in question.

You are instructed that while said section of the statute requires the officers and directors of a state bank to make examinations into the affairs of the bank, and, if possible, ascertain its condition, that a bank director or bank officer who is in such condition of health that he cannot by reason of his physical or mental condition make an examination into the affairs of the bank, is excused from so doing and his failure to make such examination while in such physical or mental condition as to render him unable to make an examination into the affairs of the bank, will not make him *to* be held to have knowledge of the insolvent condition of such bank because of such failure to make an examination into its affairs.

You are further instructed that what was the actual cash value of the assets of the bank after or when the bank was closed, would not necessarily be the actual cash value of such assets in case said bank was a going concern or when said bank was a going concern.

In determining whether the officers and directors of The Butler County State Bank knew that the bank was insolvent at the times of the reception of the deposits in question (if you find from a preponderance of the evidence that it was insolvent, as herein defined, you must consider conditions as they appeared to such officers and directors at the time of the reception of such deposits, not as they may have since developed.

[fol. 389] In determining whether or not a bank is insolvent under the first definition of insolvency, the officers and

directors have a right to exercise their judgment in the light of conditions as they appear to be at the time, and if you believe from the evidence in this case that any of the officers and directors of said bank, defendants herein, examined said bank, as required by law, and from such examination, in the light of things as they appeared to such officers and directors at the time, and in the exercise of their honest judgment, such officers and directors believed said bank to be solvent, then they did not know, within the meaning of this act, that said bank was insolvent.

The court further instructs you that there was no market, in the ordinary sense in which said term is used, for the notes of said bank at the time of the reception of the deposits in question, and if, in determining the actual cash value of said assets, the officers and directors, defendants herein, exercised ordinary care, and in their honest judgment said bank was not insolvent, and they did not believe it to be insolvent, then they did not have knowledge of its insolvency within the meaning of this act, even though you may believe from the evidence introduced on the trial of this case that said bank was, at said time, insolvent, and that the actual cash market value of its assets was insufficient to pay its liabilities.

The word "Assent," as used in the statute hereinbefore quoted, implies affirmative action of some sort as distinguished from mere silence and inaction.

In determining whether the defendants, or any of them, assented to the reception of the deposits in question, you are instructed that such assent could only be given by some affirmative voluntary act on their part, or some active par- [fol. 390] ticipation or cooperation in the particular transaction out of which the reception of the deposits in question arose.

The term "assent," as used in this statute, pre-supposes that the person charged with having assented has knowledge of the transaction involved, and it also pre-supposes the exercise of judgment on his part with reference to such transaction, and if you believe from the evidence in this action that the said T. A. Kramer was at the time of the reception of the deposits in question in East St. Louis, confined to his room with disease, and did not, and could not have access to the books of said bank, and by reason of his

condition, had no knowledge that such deposits were made, then he did not assent to the making of such deposits, and your verdict must be for the defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased.

You are instructed that, while under the statute of this state, proof that The Butler County State Bank was insolvent or in failing circumstances at the time of the reception of the deposits in question, is prima facie evidence of knowledge of such insolvency, and prima facie evidence of assent to the reception of such deposits by the officers and directors of said bank, such fact does not shift the burden of proof to the defendants, and notwithstanding such provision of the defendants, and notwithstanding such provision of the statute, on the whole case, the burden of proof rests upon the plaintiff to prove each and every material allegation in his petition by a preponderance of the evidence, and if after all the evidence is in, including that offered by the defendants, the plaintiff has not so established each and every ingredient of his case by a preponderance of the evidence, then he cannot recover and your verdict must be for the [fol. 391] defendants. And you are further instructed that if you find that T. A. Kramer was at said times a director of said bank and was, at the time of the making of such deposits, in East St. Louis, sick, and unable to make any examination into the affairs of said bank, and knew nothing of the reception of such deposits, then the prima facie case made by the proof of insolvency, if you find as a fact that said bank was insolvent, would be overcome by such conditions, and you must find for the defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased.

Section 9-163, revised statutes of 1923, provides that it is the duty of every officer, agent or manager of a banking institution to examine into the affairs of the bank, and, if possible, know its condition, but you are instructed that the act does not provide when such examinations are to be made or how frequently they are to be made; and you are instructed that, under the provisions of this statute, it is the duty of the directors and officers of a state bank to examine into the affairs of such bank with reasonable frequency and thoroughness but you are instructed that what is reasonable

frequency and thoroughness is a question to be determined by you from all the circumstances of the case; and you are further instructed that what might be reasonable frequency in the case of one officer or director might not be reasonable frequency in the case of another, and in determining whether any officer or director of The Butler County State Bank examined into the affairs of The Butler County State Bank with reasonable frequency, you are at liberty to take into consideration all the facts and circumstances showing the condition of the officers and directors, their state of health, their ability to make the examinations on account of their [fol. 392] physical or mental condition, and you are instructed that if you believe from the evidence in this case that the said T. A. Kramer was at the time of the reception of the deposits in question and had been for some time prior thereto, in East St. Louis, in a condition of health that made it impossible for him to return to El Dorado and to make examinations of said bank, and that he could not have made an examination into the affairs of said bank by reason of his condition, then, and in that event the said T. A. Kramer would not be required under said statute to make an examination into the affairs of said The Butler County State Bank while such condition continued.

You are instructed that if at the time of the reception of the deposits in question and for some time prior thereto, the said T. A. Kramer was ill and in the condition described in the fifth paragraph of the answer filed by the defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, and that upon the advice of physicians all matters of business were kept from him so as to prevent him from worrying over the same and injuring his health, and business matters were not allowed to be called to his attention, and that it would have been impossible for him in the condition of health in which he then was to give any serious attention or consideration to business matters, particularly business matters connected with The Butler County State Bank, without seriously injuring his health, then he would not be required while such condition existed to examine into the affairs of the Butler County State Bank, and his failure to make such examination would not hold him to have had knowledge of the insolvent condition of said bank.

You are instructed that in determining whether the Butler County State Bank was insolvent at the time of the re-
[fol. 393] ception of the deposits involved in this action, the officers and directors had a right to consult with and advise with the bank commissioner of the State of Kansas, and if after an examination of the books of said bank, and an examination into the affairs of said bank and after consultation and advice with the bank commissioner of the State of Kansas said officers and directors honestly believed that said bank was not insolvent, and not in failing condition, then said officers and directors could not be held to have knowledge of the insolvent condition of The Butler County State Bank, or that it was in a failing condition at the time of the reception of the deposits in question, even though you may believe from the evidence that said bank was at said time actually insolvent and in a failing condition.

In determining whether the said T. A. Kramer made such examinations of The Butler County State Bank as he was required by law to make, you must take into consideration all the facts and circumstances connected with the health and physical and mental condition of the said T. A. Kramer, as shown by the evidence in this case.

You are further instructed that the defendants in this case are not liable to the plaintiff if they did not have knowledge, at the time of the reception of said deposits, that The Butler County State Bank was insolvent, even though you may believe from the evidence introduced on the trial of this case that said bank was at said time insolvent.

You are further instructed that if you believe from the evidence in this case that the officers and directors of The Butler County State Bank made examinations of The Butler County State Bank, as required by law, and as herein defined, and from such examinations, honestly believed said bank was not insolvent, then the plaintiff cannot recover
[fol. 394] against the defendants making such examination, even though you believe from the evidence that at the time of the reception of such deposits said bank was actually insolvent.

C. L. Harris, Wheeler Brewster & Hunt, Attys. for C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, Deceased.

Instruction No. —

You are instructed that under the statutes of Kansas the officers and directors of state banks in Kansas are under the supervision, and, in many respects, under the control of the bank commissioner.

Instruction No. —

You are instructed that under the situation involved in this case the "capital stock" and "surplus" finds appearing in the statements of the bank cannot be considered as liabilities in determining insolvency.

[File endorsement omitted.]

INSTRUCTIONS GIVEN TO JURY

Omitting the caption and signatures the court gave the following instructions to the jury:

Instructions

The plaintiff, in this petition, alleges, in substance, that the Butler County State Bank was a corporation duly organized under the laws of the State of Kansas, and was a banking institution engaged in the general banking business at El Dorado, Butler County, Kansas.

[fol. 395] That all of the above named defendants were stockholders of said bank, and that defendant C. L. King was an officer, director and president of said bank on the 30th day of March, 1923, and for more than three months prior thereto; that defendant H. F. Ferry was an officer, director, vice-president and cashier of said bank on the 30th day of March, 1923, and for more than three months prior thereto; that defendant L. D. Hadley was an officer, director and assistant cashier, and defendants A. B. Ewing, G. W. Lyon and T. A. Kramer were officers and directors of said bank on said 30th day of March, 1923, and for more than three months prior thereto; and that said defendants and each of them, as such officers and directors, actively participated in the management of the affairs of said bank.

That on the 8th day of March, 1923, the plaintiff had on deposit in said bank the sum of $2,168.85 in a checking account; that on the 8th day of March, 1923, he deposited in said bank the sum of $40,000.00 in said account, and on said date checked out the sum of $17,751.36; that on the 12th day of March he deposited the sum of $1,411.17; that on the 13th of March he deposited the sum of $1,600.00; that on the 16th of March he checked out the sum of $8,294.35; that on the 17th of March he checked out the sum of $23.75; that on the 26th of March he deposited the sum of $3,615.60; that said banking institution received said deposits and credited the same to the account of this plaintiff upon the records of said bank, and thereby became indebted to the plaintiff in the amount of said deposits so made.

Plaintiff avers that at the time he deposited said sums, said bank was insolvent and in failing circumstances, and had been insolvent and in failing circumstances for more [fol. 396] than six months prior to March 30,1923; that said defendants and each of them knew at the time said deposits were made, and for more than six months prior to March 30, 1923, had known that said bank was in said condition, or by an examination into the affairs of the bank—which it was their duty to make—they could have ascertained such fact, and the plaintiff had no knowledge of the actual condition of said bank until same was closed by the bank commissioner.

Plaintiff avers that the defendants and each of them, notwithstanding their knowledge and means of knowledge, assented to the bank receiving the said deposits as hereinbefore stated.

That on the 30th day of March, 1923, the said bank was closed by the bank commissioner of the State of Kansas, and on that date suspended payment of its obligations, and that on such date there remained of the deposits so made the sum of $22,726.16 unpaid, which sum is now due this plaintiff with interest thereon at the rate of 6% per annum from the 30th day of March, 1923, and that said amount is now due this plaintiff from said defendants and each of them.

Wherefore, plaintiff asks judgment against said defendant T. A. Kramer died, and that C. L. Harris is now the duly and legally appointed, qualified and acting executor of the estate of said T. A. Kramer, deceased.

Wherefore, plaintiff asks judgment against the defendants and each of them for the sum of $22,726.16, with interest at 6% per annum from March 30, 1923.

Certain matters were alleged in this petition as against the defendant, E. F. Adams, not necessary to state here, for the reason that the court has disposed of the case as to the defendants, E. F. Adams, and also as to defendant, G. W. Lyon, and no question as to liability of these two defendants is submitted to the jury for its consideration. [fol. 397] While the action is prosecuted against all of the other defendants together, yet you will consider the same as if pursued against each of them separately and you will consider the evidence and determine as to the liability of each of them without regard as to the liability of the others.

3

The defendants, C. L. King, H. F. Ferry and A. B. Ewing admit that the Butler County State Bank was a corporation and that they were officers and directors therein, as alleged in the petition; but these defendants deny that said bank was insolvent or in failing circumstances for more than six months prior to March 30, 1923, or at any of the times on which it is alleged that the various deposits were made; and they deny that by an examination into the affairs of said bank at any of said times they could have ascertained that said bank was insolvent or in failing circumstances, and deny that they assented to the reception of any of such deposits knowing that said bank was insolvent or in failing circumstances.

4

The defendant, C. L. Harris, as executor of the estate of T. A. Kramer, deceased, admits that the Butler County State Bank was a duly organized corporation doing business as a state bank in El Dorado, Kansas; but denies that said bank was insolvent for more than six months prior to March 30, 1923, or at any of the times alleged in the petition on which it is claimed that the various deposits were made; and denies that said Kramer knew that said bank was in an insolvent and failing condition, or that by an examination [fol. 398] into the affairs of said bank, at any of said times,

said Kramer could have ascertained that said bank was in an insolvent and failing condition; and denies that said Kramer participated in the active conduct and affairs of said bank, except in connection with such duties as he may have performed from time to time as a director of said bank.

4-A

This defendant further alleges that on the — day of August, 1918, the said T. A. Kramer, while living in the State of California, was taken sick and compelled to undergo a severe surgical operation, from which he never fully recovered; that on the — day of May, 1920, he returned to El Dorado, Kansas, where he again underwent a serious abdominal operation, on account of which he was unable to attend to any business and from which he never fully recovered; that about the 10th of July, 1922, he left El Dorado for the purpose of rest and recuperation, and on August 15, 1922, in the City of Boston, Mass., he was again compelled to undergo a severe operation; that in November, 1922, he was removed to East St. Louis, where in December another operation was performed on him, and his condition gradually grew worse until the date of his death, July 23, 1923; that from the time of his first operation until the day of his death he was unable to attend to any business of importance; that by reason of his condition he was unable to return to El Dorado at any time after his operation in Boston on August 16th, 1922; that his suffering was so intense and his physical condition of such a character that it was impossible for him to direct his mind for any length of time to any business matter or give attention to business affairs; [fol. 399] that by reason of these facts and circumstances, it was impossible for him to give any attention to the affairs of The Butler County State Bank, and during all of said period he had no access to the books and records of said bank and was in no condition, physically or mentally, to make any examination of the business or condition of said bank, and it was impossible for him to assent to the acceptance of any deposits in said bank; that during all of said period he was constantly attended by his relatives, who, acting under the advice of his physicians, kept all business matters from him as far as possible; that it was impossible

for him to give any serious attention or consideration to business matters without seriously injuring his health and shortening his life.

5

The defendant, L. D. Hadley, for his separate answer to the petition of the plaintiff, denies each and every allegation in said petition, except such as are specifically admitted in his answer.

This defendant denies that said bank was insolvent or in failing circumstances at any of the time alleged in the petition, denies that he knew said bank was in such condition, or that by an examination into the affairs of the bank at any of said times he could have ascertained that it was insolvent or in failing circumstances, and denies that he assented to any of the alleged deposits knowing that said bank was insolvent or in failing circumstances.

This defendant admits that he held the position of assistant cashier from July 2, 1917, to March 30, 1923; that there was transferred to him on January 4, 1921, five shares [fol. 400] of stock of the bank belonging to J. B. Adams; that he never paid anything for said stock, that when the double assessment upon said stock was made by the Bank Commissioner, it was paid by the estate of J. B. Adams; that while he was named as a director of said bank, he at no time took any active part in the management of, and had no control over, the affairs of said bank; that he was not notified of directors' meetings and was not recognized by the officers and other directors as having any authority to act as director; that the position of assistant cashier did not constitute him an officer of said bank.

6

Section 9-163 of the 1923 Statutes of Kansas provides that "It shall be unlawful for any President, Director, Manager, Cashier, or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to

examine into the affairs of the same, and, if possible, know its condition. And upon failure of any such person to discharge such duty, he shall, for the purposes of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisons of this section shall be individually responsible for such deposits so received and all such debts so contracted."

And Section 9-164 provides that "the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to [fol. 401] have been so created, shall be prima facie evidence of the knowledge and assent to such deposit or the creation of such debt on the part of such officer, agent or manager so charged therewith."

6-A

The purpose of these laws is to insure constant and vigilant watch over the conduct of the affairs of the banks of this state, and the directors and officers named in such statutes are charged with knowledge of, and they are presumed to know, the general condition and management of their bank, its condition as to solvency or insolvency, whether it is in a failing condition or not, and to know everything of importance that occurs in the bank at the time it occurs, or within a reasonable time thereafter, which they, by a careful, prudent and frequent examination into the affairs of the bank, could possibly ascertain.

7

It is admitted that The Butler County State Bank of El Dorado, Kansas, at all of the times mentioned in the plaintiff's amended petition, was and is a duly and legally organized and existing banking corporation under the laws of said state.

It is also admitted that the defendant, C. L. King, at all such times was a director and president of said bank; that the defendant, H. F. Ferry, was a director of said bank and after January, 1922, the vice-president and cashier

thereof; and that the defendant, A. B. Ewing, at all such times was a director of said bank.

[fol. 402] You are instructed that the burden of proof is upon the plaintiff to establish the fact that the defendant, L. D. Hadley, and also T. A. Kramer, were directors of said bank during the times mentioned.

If a person allows and permits his name to be carried upon the books and records of a banking institution as a director thereof, and joins in executing the papers of said bank as director and in making reports and communications to The State Bank Commissioner's office as such, then he is estopped to deny that he is a director of such institution.

8

The burden of proof in this case, in the first instance, is upon the plaintiff, and before he can recover from the defendants, or any of them, he must prove by a preponderance of the evidence, the following facts:

First. That the Butler County State Bank was insolvent or in failing circumstances at the time the deposits in controversy were received.

Second. That the defendants had knowledge of the insolvency of the bank, or that it was in failing circumstances, at the time such deposits were received.

Third. That the defendants assented to the reception of such deposits.

But if the plaintiff has so established these facts, then he will be entitled to recover against such defendants as he has so made the proof against. If, however, he has not so established each and all of these facts, then he cannot recover.

9

A bank may be said to be in failing circumstances when it is uncertain whether, in the general course of events, it [fol. 403] will be able to continue to function as a bank; when its condition becomes such as to raise a serious question in the minds of those competent to judge as to whether or not it is solvent.

An able law writer says: "A bank is in failing circumstances when in a state of uncertainty whether it will be able

to sustain itself, depending on favorable or unfavorable contingencies, which in the course of business may occur, and over which its officers have no control."

10

A state bank is insolvent under the statutes of this state, first, when the actual cash market value of its assets is insufficient to pay its liabilities; second, when it is unable to meet the demands of its creditors in the usual and customary manner; third, when it shall fail to make good its reserve as required by law, and you are instructed under the evidence in this case that the bank in question did not fail to meet the demands of its customers in the usual and customary manner, and did not fail to make good its reserve when required, and was not at the time of the reception of the deposits in question insolvent within the meaning of the second and third paragraphs, and it is only necessary for you in determining whether said bank was insolvent at the time of the reception of the deposits in question, to determine whether at such times the actual cash market value of its assets was insufficient to pay its liabilities.

You are instructed that under the situation involved in this case the "capital stock" and "surplus" funds appearing in the statements of the bank cannot be considered as liabilities in determining insolvency.

[fol. 404] 11

In determining whether or not a bank is solvent under the first definition heretofore given of insolvency, the officers and directors have a right to exercise their judgment in the light of conditions as they are at the time, and if you believe from the evidence in this case that any of the officers and directors of the bank examined the same, as required by law, and that from such examination, in the light of things as they appeared to such officers and directors, defendants herein, at the time, and that in the exercise of their honest judgment, such officers and directors in fact believed said bank to be solvent and not in failing circumstances, then they did not know, within the meaning of the law, that said bank was insolvent or that it was in failing circumstances.

12

You are further instructed that in applying the test to determine the question of solvency or insolvency, you should consider whether or not the actual cash market value of the bank's assets at the time in question were sufficient to pay its liabilities, and in determining the actual cash market value of such assets, you may regard the capital surplus and undivided profits of said bank as assets of the same, if you find that the bank at such time had such assets.

13

In determining the fact of solvency or insolvency of a bank, it is permissible to go into an investigation of the assets and property of the bank, and this includes all prop-[fol. 405] erty owned by the bank as of the date when the deposit was made, and the value of such property at the time that the bank is closed and placed in charge of the State Banking Department may be considered and only to the extent that the same may tend to prove the value of same at the time of the deposit or deposits, complained of.

14

You are instructed that in determining as to whether the bank was insolvent or in failing circumstances at the time of the making of the deposits in controversy, you will consider the actual cash value of the assets of said bank at such time, and such would not necessarily be the value of such assets after the bank was closed. Evidence has been received, however, as to the value of the assets prior to the dates of the deposits in question, and also as to their value after the bank was closed, and you may consider such evidence in so far as it may assist you in determining what the value of such assets was at the time of the deposits.

14-A

The fact that a bank borrows large sums of money from correspondent banks, or discounts its paper is not, in and of itself, evidence of insolvency. A bank, like an individual may be perfectly solvent, and yet not have sufficient cash on

hand to meet its needs, and thereby be compelled to borrow money, or sell some of its securities.

15

The making and carrying of excess loans by a bank is, in and of itself, not proof of insolvency, but if the jury finds, [fol. 406] in this case, that the bank did carry excess loans, it may take that fact into consideration in determining whether or not the bank was, in fact, insolvent, at the times under consideration, in this case, and evidence in relation thereto is competent and material insofar as it tends to prove or disprove the insolvency of the bank at such times.

16

If you find that the bank was actually insolvent at the times of the deposits in controversy, or that it was in failing circumstances, then such fact of insolvency or of failing condition, is prima facie evidence that the defendants, or such of them as you shall find to have then been directors or officers of said bank at such times, knew the condition of the bank and assented to the receipt of such deposits, and that will cast upon such defendants the burden of proving that they did not have such knowledge and did not give such assent, and they will be required to establish such by a preponderance of the evidence, before they can escape the presumption of such knowledge and the effect thereof which is imposed upon them by the law.

17

To "assent" means to concur, to consent to, to endorse. While the word usually implies affimative action of some sort as distinguished from mere silence and inaction, yet you are instructed that where the officers and directors of a bank keep such institution open for business on business days and transact the usual ordinary business done at banking institutions and during which time deposits are made at such bank and receiver, then and in that event, the officers [fol. 407] and directors of such bank are in law presumed to have assented to the reception of deposits made under such

circumstances. So in this case, if you believe from the evidence that The Butler County State Bank, prior to March 29, 1923, had been kept open for general banking business on the days and at the times on which plaintiff claims to have made the deposits in said bank, then and in that event the officers and directors thereof would be presumed in law to have assented to the reception of the deposits so made.

17-A

Instruction No. —

Revised Statutes of Kansas of 1923, Sec. 9-130, provides in part as follows:

"If upon examination by the state bank commissioner or his deputy, or from any report made to the bank commissioner, it shall appear that any bank is insolvent, or has wilfully violated any requirement of the act to which this is amendatory, it shall be the duty of the bank commissioner to immediately take charge of such bank and all property and effects thereof * * * ."

In this connection you are instructed that it is presumed in law (in the absence of proof to the contrary) that a public officer has performed all the duties enjoined upon him by law.

18

Under the statutes of Kansas, the officers and directors of state banks are under the supervisions, and, in many respects under the control of the State Bank Commissioner, but in this connection, you are further advised that—

[fol. 408] Under the law it is the duty of the officers and directors of a state bank in Kansas to reasonably and carefully examine into the condition and affairs of such, that is, make reasonably frequent and thorough examinations, and, if possible, know its condition, and upon failure of any such officers or directors to discharge such duty, he is held to have knowledge of the insolvency of such bank, or that it was in failing circumstances, if, in fact, it was so insolvent or in failing circumstances; and in this connection you are instructed that if you find the bank was insolvent or in failing circumstances, and that any of the defendants, who

were charged with the conduct and management of the bank, as explained, failed and neglected to make reasonable examinations into its affairs, for the purpose of ascertaining its condition, then such defendants would be charged with knowledge of the fact that the bank was insolvent or in failing circumstances, and would be liable for all deposits made in such bank at said times, with their assent.

19

On the other hand, although the fact that the bank was insolvent or in failing circumstances, if such was the fact, charges the officers and directors with prima facie knowledge of such, still if you find by a preponderance of the evidence that the defendants, or any of them, did make such reasonable and timely examination of the affairs of the bank as under the conditions would be made by careful and diligent officers and directors of a bank, and such as to character and frequency as were reasonably necessary to ascertain and know the condition thereof, and were still not able to, and did not, discover the condition of the bank, that [fol. 409] is, that it was insolvent or in failing circumstances, then such would not be liable for deposits received into said bank at such times. In other words, the officer or director is permitted to show that it was not reasonably possible for him to ascertain the true condition of the bank, although he had diligently examined into its affairs with reasonable frequency, and if he has shown this, and that he did not, in fact, know such conditions, then he would not be liable.

20

You are instructed that while the banking department of the state has large control and wide supervision over the conduct and management of the state banks, still, so long as the banks are in charge of their officers and directors, they are responsible for the management of same, and in this connection, you are instructed that what any commissioner of the state banking department, or examiner therein, may think that a bank's condition is not controlling and cannot be urged as a defense for such officers and directors of its bank not doing their duty. Some evidence has been re-

ceived in this case of the opinion of certain bank commissioners and examiners as to the condition of the bank, and of suggestions or advice given by them to the officers and directors of this bank, but you are advised that such evidence is to be considered by you, not as a defense against liability of the defendants, if the things necessary to establish their liability have been proven, but only as such may assist you in determining as to the question of knowledge of such officers and directors, if it does assist in this respect, as to the real condition of their bank.

21

You are instructed that if you believe from the evidence in this case that the officers and directors of The Butler County [fol. 410] State Bank made examinations of the same, as required by law, and as herein defined, and that from such examination were not able to ascertain and know that the bank was insolvent or in failing circumstances, but from such examination honestly believed that it was not insolvent and was not in failing circumstances, then the plaintiff in this action cannot recover against the defendants making such examinations, even though you believe from the evidence that at the time of the reception of such deposits said bank was actually insolvent or in failing circumstances.

22

The defendant Harris, as executor of the estate of T. A. Kramer, deceased, interposes the defense that the said Kramer for many months prior to the closing of said bank was absent from Butler County, Kansas, on account of sickness and was unable to return to said county, or to exercise any control over the affairs of the Butler County State Bank, or to in any way, examine into its affairs, or control, or direct its management; and in this connection, you are instructed that the burden of proof is upon the said defendant to establish this defense by a preponderance of the evidence. That is, the defendant Harris must prove by a preponderance of the evidence the fact that said Kramer was, under conditions and circumstances, which he could not control, detained from Butler County on account of sickness and was not, on account of such sickness, able to return

to said county, and was not, thereby, able to be present and know as to the condition and management of said bank and to give his assistance and advice in the management and control of the same.

[fol. 411] 23

You are instructed that if you believe from the evidence in this case that the said T. A. Kramer was at the time said deposits were made, and had been for some time prior thereto, in a condition of health that made it impossible for him, on account of his mental or physical condition, to make an examination into the affairs of said bank, and if you find that he was a director of said bank at the time of the reception of such deposits, then before he can be held liable under the statute for such deposits, it must be shown by a preponderance of the evidence that he had knowledge of the reception of the deposits in question, and with such knowledge assented to the making of such deposits, and in considering whether such knowledge and assent was had by the said T. A. Kramer, you are not to take into consideration the fact that he failed to make the examinations of said The Butler County State Bank as required by law, if you find as a fact that he was at such times unable, because of his physical or mental condition, to make such examinations.

24

And you are instructed that if you believe from the evidence that the said T. A. Kramer was in the condition described in instruction No. 4-a, above set out, and was by reason of such condition unable to give any attention to the affairs of said The Butler County State Bank, and was in no condition physically or mentally to make any examination into the business or the condition of said bank, then, and in that event, as a matter of law, he would not be required to make any examination and is not chargeable for any failure so to do.

[fol. 412] 25

You are instructed that if you believe that the said T. A. Kramer was in the condition set out in the instruction No. 4-a, above, and that acting under the advice of his physi-

cians, all matters of business were kept from him, in order that his health might not be injured by attention to such business, then you are instructed that it would not be incumbent upon him to make the examinations required in section 9-163 of the revised statutes of 1923, heretofore quoted, and he could not be held to have given his assent to the reception of such deposits, unless the plaintiff in this case has shown by a preponderance of the evidence that he had actual personal knowledge of the making of the deposits herein and that he actually authorized such deposits to be received or that he actually assented to the reception of such deposits.

26

The fact, if it be a fact, that the plaintiff has received a guaranty fund certificate on the state guaranty fund for the amount of his deposit, does not in any way prejudice his right of recovery in this case, and if you should find that he is entitled to recover from the defendants, or any of them, the amount of such recovery will be the sum of the deposits which you find that the plaintiff made in the Butler County State Bank at times and under such conditions, as explained in these instructions, as entitles him to recover, with six per cent interest from the 30th day of March, 1923, less, however, the sum of $4,545.23 paid as of date January 18, 1924, and the sum of $2,272.61, paid as of the date, December 24, 1925, which sums the plaintiff admits that he has received upon his said claim.

[fol. 413]

27

In determining what facts are proved in this case you should carefully consider all of the evidence given before you, with all the circumstances of the transactions in question as detailed by the witnesses, and you may find any fact to be proved which you believe may be rightfully and reasonably inferred from all of the evidence given in the case.

28

"Preponderance of the evidence" is a phrase which, in its last analysis means, probability of its truth. It does not necessarily mean the greater number of witnesses, but

rather the greater weight of the evidence; that evidence which is most satisfactory and convincing to the jury.

29

You are the exclusive judges of the facts in this case, the weight of the evidence and the credibility of the witnesses. In testing the truth of a witness's statement you will draw upon your fund of common knowledge and experience of men and affairs. In weighing evidence and passing upon the credibility of the witnesses, jurors may use their experience in the ordinary affairs of life and their knowledge of human nature.

A. T. Ayres, Judge.

JUDGMENT

The judgment and decree of the court on the verdict of the jury omitting signatures and caption is as follows:

And now, to-wit, on this 15th day of March, 1926, the same being one of the days of the regular March, 1926, term [fol. 414] of the District Court of Butler County, Kansas, this cause came on for trial pursuant to assignment. The plaintiff appeared in person and by John J. Jones and K. M. Geddes, his attorneys; and the defendant-, C. L. King, H. F. Ferry and A. B. Ewing, appeared in person and by A. C. Malloy and J. B. McKay, their attorneys; the defendant, L. D. Hadely, appeared in person, and by Leland & Bond, his attorneys; the defendant, E. F. Adams, appeared by J. B. McKay, her attorney; and the defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appeared in person and by S. M. Brewster, his attorney; and the defendant, George W. Lyon, appeared in person and by Hamilton & Woodward, his attorneys.

Thereupon, all parties announced themselves ready for trial, and by agreement of all parties, made in open court, and with the consent and approval of the court, a jury of ten lawful jurors of the county were duly examined, empaneled and sworn to try the case.

Thereupon, a statement of the case was made on behalf of the plaintiff, by his attorney, K. M. Geddes, and a state-

ment of the case on behalf of C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, was made by his attorney, S. M. Brewster, and the hour of adjournment having arrived, the further hearing of this cause was continued until the 16th day of March, at nine o'clock, A. M.

And now, to-wit, on this 16th day of March, 1926, this cause came on for hearing pursuant to adjournment, and all parties appeared as of the date of the opening of the trial, and the further hearing of this cause was proceeded with; and a statement of the case was thereupon made to the jury on behalf of the defendant, L. D. Hadley, by his attorney, L. J. Bond; and a statement of the case was made [fol. 415] to the jury on behalf of the defendant, E. F. Adams, by her attorney, J. B. McKay, and a statement of the case was made to the jury on behalf of the defendant, George Lyon, by his attorney, R. C. Woodward; and a statement of the case was made to the jury on behalf of the defendants, C. L. King, A. B. Ewing and H. F. Ferry, by their attorney, A. C. Malloy; and thereupon a reply statement was made on behalf of the plaintiff to the jury by his attorney, K. M. Geddes.

Thereupon, the plaintiff began the introduction of his evidence in the case, and the defendants, and each of them, objected to the offering of any evidence on behalf of the plaintiff, for the reason that the amended petition filed in the case wholly failed to state any cause of action against the defendants, or either of them, which said objection was by the court overruled, and duly excepted to, and thereupon the plaintiff continued to offer evidence until the hour of six o'clock, P. M., at which time the further hearing of this cause was adjourned until nine o'clock, A. M., March 17th, 1926.

Thereupon, and on March 17, 1926, this cause came on for hearing pursuant to adjournment, and all parties appeared as of March 16, 1926, and the plaintiff continued the offering of evidence in his behalf until the hour of adjournment had arrived, and thereupon the further hearing of this cause was adjourned until nine o'clock A. M. March 18, 1926.

Thereupon, and on March 18, 1926, this cause came on for further hearing pursuant to adjournment, all parties appearing as of date March 17, 1926, and the plaintiff continued the further introduction of evidence on his behalf, and rested his case.

Thereupon, the defendants, and each of them, read into the record their separate demurrer to the plaintiff's evi- [fol. 416] dence, which separate demurrers were sustained as to the defendant, E. F. Adams, and as to the defendant, George W. Lyon, and overruled as to the remainder of the defendants, to which ruling of the court in sustaining such separate demurrers the plaintiff duly excepted and excepts, and to which ruling of the court in overruling such separate demurrers the defendants excepted and except.

Thereupon the defendants began the introduction of their testimony, and the hour of adjournment having arrived, the further hearing of this cause was adjourned until the 19th day of March, 1926, at nine o'clock, A. M.

Thereupon, and on March 19, 1926, this cause came on for further hearing pursuant to adjournment, all defendants appearing except the defendants, E. F. Adams and George W. Lyon, as of date March 18, 1926.

And thereupon the defendants offered their further evidence in the case, and rested; and the plaintiff offered his evidence in rebuttal.

Thereupon the jury were instructed in writing by the court, and the further hearing of this cause was adjourned until March 20, 1926, at nine o'clock, A. M.

Thereupon, and on March 20, 1926, this cause came on for further hearing pursuant to adjournment, and all parties appeared as of date March 19th, 1926, and the cause was thereupon argued to the jury by counsel for the plaintiff and for the defendants, except the defendant E. F. Adams and the defendant, Gorge W. Lyon, and thereupon the jury retired to their jury room in charge of a sworn bailiff, to deliberate on the cause.

And afterwards, and on the 20th day of March, 1926, the jury were returned into court, and having not arrived at any verdict the further hearing of this cause was adjourned until the 22nd day of March, 1926, and the jury were duly

[fol. 417] cautioned by the court and excused until such date.

Thereupon, and on March 22, 1926, this cause came on for further hearing pursuant to adjournment, and all parties appearing as of date March 20, 1926, the jury retired to its jury room for further deliberation on the case, in charge of a sworn bailiff of the court.

And afterwards, and on said date, said jury returned into court, and on inquiry by the court, announced that they had agreed upon a verdict, which verdicts were duly received by the court, and read by the clerk of the court, and which are in words and figures as follows, to-wit:

"We, the jury empaneled and sworn in the above entitled cause, do upon our oath find for the plaintiff and against the defendant C. L. King, and fix the amount of the plaintiff's recovery at $19,379.34.

J. A. Morrison, Foreman."

"We, the jury empaneled and sworn in the above entitled cause, do upon our oath find for the plaintiff and against the defendant A. B. Ewing, and fix the amount of the plaintiff's recovery at $19,379.34.

J. A. Morris, Foreman."

"We, the jury empaneled and sworn in the above entitled cause, do upon our oath find for the plaintiff and against the defendant H. F. Ferry, and fix the amount of the plaintiff's recovery at $19,379.34.

J. A. Morris, Foreman."

"We, the jury empaneled and sworn in the above entitled cause, do upon our oath find for the plaintiff and against the defendant L. D. Hadley, and fix the amount of the plaintiff's recovery at $19,379.34. We recommend that [fol. 418] L. D. Hadley pay not to exceed 2.9 per cent of the amount envolved.

J. A. Morris, Foreman."

"We, the jury empaneled and sworn in the above entitled cause, do upon our oath find for the defendant, C. L. Harris, executor of estate of T. A. Kramer, deceased, not liable on account of said T. A. Kramer being physically unfit to know the conditions of The Butler County State

Bank at the time the deposits were made by the plaintiff that are now in controversy.

J. H. Morris, Foreman."

After the reading of each and every verdict the court inquired of the jury, and each and all of them, if that was their verdict in the case, and the jury announced that it was, and thereupon such verdicts were by the court received, and the jury discharged from further deliberation in the case.

Motion of Plaintiff for a New Trial

Omitting the caption and signatures the plaintiff's motion for a new trial as against the defendant C. L. Harris, as executor is as follows:

Comes now the plaintiff, and moves the court to set aside the verdict of the jury heretofore rendered in this cause, in favor of the defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, and against this plaintiff, for the following reasons, to-wit:

1. Because of abuse of discretion of the court.

2. Erroneous rulings of the court.

3. Errors of law occurring on the trial of the case.

4. That the verdict of the jury is contrary to the evidence, and contrary to the law.

[fol. 419] 5. That the court erred in admitting incompetent, irrelevant and immaterial testimony, offered on behalf of defendant, and objected to by the plaintiff.

6. That the court erred in excluding competent and material testimony offered on behalf of the plaintiff, and objected to by the defendant.

7. That the court erred in its rulings on the trial.

8. That the court erred in its instructions given to the jury, and excepted to by the plaintiff.

9. That the court erred in refusing to give instructions requested by the plaintiff and refused by the court, and duly excepted to by the plaintiff.

Defendants' Motions for New Trial

Motion of Defendant L. D. Hadley for a New Trial

Omitting the caption and signatures the motion for a new trial of defendant L. D. Hadley is as follows:

Comes now the defendant, L. D. Hadley, and moves the court to set aside the verdict of the jury in the above entitled cause and to award the defendant, L. D. Hadley, a new trial in said case, because it appears that the rights of the defendant, L. D. Hadley, were and are substantially affected in said trial as follows:

First. Because of abuse of discretion of the court, misconduct of the jury and because of accident and surprise which ordinary prudence could not have guarded against and because the defendant, L. D. Hadley, was not afforded a reasonable opportunity to present his evidence and to be heard on the merits of his case.

Second. Because of erroneous rulings and instructions of the court.

Third. Because the verdict of the jury was given under the influence of passion and prejudice.

Fourth. Because the verdict is in whole and part contrary to the evidence.

[fol. 420] Fifth. Because the defendant, L. D. Hadley, has newly discovered evidence material to his case which he could not with reasonable diligence have discovered and produced at the trial.

Wherefore the defendant, L. D. Hadley, moves the court to set aside the verdict in the above entitled cause for the reasons given and to grant said defendant a new trial in said cause.

Motion of Defendant H. F. Ferry for a New Trial

Omitting the caption and signatures the following is the motion for a new trial of defendant H. F. Ferry:

Comes now defendant H. F. Ferry and moves the court to set aside and vacate the verdict of the jury as to this de-

fendant, and grant this defendant a new trial of this case, for the following reasons:

1. Because of abuse of discretion of the court; misconduct of the jury and of the plaintiff, and accident and surprise which ordinary prudence could not have guarded against.

2. Erroneous rulings and instructions of the court.

3. That the verdict was given under the influence of passion and prejudice.

4. That the verdict is in whole and in part contrary to the evidence.

5. For newly discovered evidence material for this defendant, which this defendant could not with reasonable diligence have discovered and produced at the trial.

6. That the verdict is contrary to the law and was not warranted or supported by the law or the evidence.

7. That the statutes under which this action was brought, being Sections 9-163 and 9-164 Revised Statutes of Kansas of 1923, were and are unconstitutional and void.

[fol. 421] Motion of Defendant A. B. Ewing for a New Trial

Omitting the caption and signatures, the motion of defendant, A. B. Ewing, for a new trial is as follows:

Comes now defendant, A. B. Ewing, and moves the court to set aside and vacate the verdict of the jury as to this defendant, and grant this defendant a new trial of this case, for the following reasons:

1. Because of abuse of discretion of the court; misconduct of the jury and of the plaintiff, and accident and surprise which ordinary prudence could not have guarded against.

2. Erroneous rulings and instructions of the court.

3. That the verdict was given under the influence of passion and prejudice.

4. That the verdict is in whole and in part contrary to the evidence.

5. For newly disclosed evidence material for this defendant, which this defendant could not with reasonable diligence have discovered and produced at the trial.

6. That the verdict is contrary to the law and was not warranted or supported by the law or the evidence.

7. That the statutes under which this action was brought, being Sections 9-163 and 9-164, Revised Statutes of Kansas of 1923, were and are unconstitutional and void.

Motion of Defendant C. L. King for a New Trial

Omitting the signatures and caption the motion for a new trial of defendant, C. L. King, is as follows:

Comes now defendant, C. L. King, and moves the court to set aside and vacate the verdict of the jury as to this [fol. 422] defendant, and grant this defendant a new trial of this case, for the following reasons:

1. Because of abuse of discretion of the court; misconduct of the jury and of the plaintiff, and accident and surprise which ordinary prudence could not have guarded against.

2. Erroneous rulings and instructions of the court.

3. That the verdict was given under the influence of passion and prejudice.

4. That the verdict is in whole and in part contrary to the evidence.

5. For newly discovered evidence material for this defendant, which this defendant could not with reasonable diligence have discovered and produced at the trial.

6. That the verdict is contrary to the law and was not warranted or supported by the law or the evidence.

7. That the statutes under which this action was brought, being Sections 9-163 and 9-164, Revised Statutes of Kansas of 1923, were and are unconstitutional and void.

Order on Motions for a New Trial

All motions of the various parties for a new trial were by the court overruled and exceptions duly saved.

And now, to-wit, on this 27th day of March, 1926, this cause comes on for hearing on the separate motions of the defendants, C. L. King, A. B. Ewing and H. F. Ferry, to set aside the verdict of the jury heretofore rendered against each defendant, and to grant such defendants a new trial. The plaintiff appeared in person and by K. M. Geddes, his attorney, and the defendants, C. L. King, H. F. Ferry and A. B. Ewing appeared by J. B. McKay, their attorney.

[fol. 423] The court, after being fully advised in the premises, finds that each of said separate motion should be overruled.

It is, therefore, by the court ordered and adjudged that the separate motion of the defendants, C. L. King, H. F. Ferry and A. B. Ewing be, and the same are hereby overruled, to which ruling of the court the defendants, and each of them, duly except and excepted.

Thereupon, and on oral motion of the plaintiff, the court finds that judgment should be rendered on the verdicts as against each of the defendants, C. L. King, H. F. Ferry and A. B. Ewing.

Judgment as to King, Ferry and Ewing

It is therefore, by the court ordered, decreed and adjudged that the plaintiff do have and recover judgment on the verdict against the defendant, C. L. King for the sum of $19,379.34, together with 6 per cent interest thereon from this date, and for the costs of this action, and that the plaintiff do have and recover judgment against the defendant, H. F. Ferry, on the verdict, for the sum of $19,379.34, with 6 per cent thereon from this date, and for the costs of this action, and that the plaintiff do have and recover judgment against the defendant, A. B. Ewing, on the verdict of the jury for the sum of $19,379.34, together with 6 per cent interest from this date, and for the costs of this action; whereof let execution issue.

To which ruling and judgment of the court the defendants, C. L. King, H. F. Ferry and A. B. Ewing, duly excepted and except.

JUDGMENT AS TO L. D. HADLEY

And now, to-wit, on this 27th day of March, 1926, same being one of the days of the regular March, 1926, term of said court, this cause comes on for hearing on the motion [fol. 424] of the defendant, L. D. Hadley, to set aside the verdict of the jury, and to grant a new trial herein.

The plaintiff appeared in person and by K. M. Geddes, his attorney, and the defendant appeared in person and by L. J. Bond, his attorney.

Thereupon the defendant offered his testimony in support of his motion, and the court, after being fully advised in the premises, finds that said motion should be overruled.

It is, therefore, by the court ordered and adjudged that the motion of the defendant, L. D. Hadley, for a new trial be, and the same is hereby overruled, to which ruling of the court the defendant duly excepted and excepts.

Thereupon, and on the oral motion of the plaintiff, the court finds that judgment should be rendered herein on the verdict in favor of plaintiff and against the defendant, L. D. Hadley.

It is, therefore, by the court, ordered, decreed and adjudged that the plaintiff do have and recover judgment against the defendant, L. D. Hadley, for the sum of $19,379.34 together with 6 per cent interest thereon from this date, and for the costs of this action. Whereof, let execution issue. To which ruling and judgment of the court the defendant, L. D. Hadley, duly excepted and excepts.

JUDGMENT AS TO C. L. HARRIS, EXECUTOR OF LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED

The judgment and decree of the court on the verdict of the jury as to C. L. Harris, executor, omitting the signatures and caption is as follows:

[fol. 425] And now, to-wit, on the 27th day of March, 1926, the same being one of the days of the regular March, 1926, term of the District Court of Butler County, Kansas, the above entitled cause came on for hearing upon the motion of the plaintiff, G. L. Ramsey, for a new trial as against the defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased.

The plaintiff appeared in person and by his attorneys, John J. Jones and K. M. Geddes, and the defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appeared in person and by his attorneys, Wheeler, Brewster & Hunt, and C. L. Harris, and after argument of counsel, and being fully advised in the premises, the court doth overrule the motion of the plaintiff, G. L. Ramsey, for a new trial.

And thereupon it was by the court considered, ordered and adjudged that upon the verdict in said cause rendered in favor of the defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, that the plaintiff take nothing by reason of his cause of action, and that the judgment be rendered in favor of said executor, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, and that he go hence without day.

And it is further ordered, considered and adjudged that said defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, have and recover of and from the plaintiff, G. L. Ramsey, his costs in said action made, taxed at $—, for which let execution issue.

To all of which rulings and judgment of the court the plaintiff duly excepts and excepted.

[fol. 426] JOURNAL ENTRY OF JUDGMENT AND OF THE RULING ON THE VARIOUS MOTIONS FOR A NEW TRIAL IN THE CASE OF RAMSEY PETROLEUM COMPANY VS. E. F. ADAMS ET AL.

Omitting the caption and signatures the journal entry of judgment and of the ruling of the court on the various motions for a new trial in the above entitled case is as follows:

Now to-wit: On this 12th day of April, 1926, the same being one of the days of the regular March, 1926, term of the District Court of Butler County, Kansas, this cause came on for trial in regular order pursuant to assignment.

The plaintiff appeared by G. L. Ramsey, its president, and by John J. Jones and K. M. Geddes its attorneys, and the defendant E. F. Adams appeared by J. B. McKay her attorney; the defendant C. L. King and A. B. Ewing ap-

peared in person and by J. B. McKay, their attorney; the defendant H. F. Ferry appeared by J. B. McKay, his attorney; the defendant G. W. Lyon appeared in person and by Hamilton and Woodward, his attorneys; the defendant L. D. Hadley appeared in person and by Leland and Bond, his attorneys; and the defendant C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appeared in person and by S. M. Brewster and C. L. Harris, his attorney.

Thereupon by agreement of all of the parties to this action and their respective attorneys the trial of this cause to a jury was waived and by agreement tried to court.

Thereupon and by the consent and agreement of all parties to this action all of the general evidence offered in this court in the trial of the case of G. L. Ramsey, plaintiff, versus E. F. Adams et al, defendants on behalf of the plaintiff was offered in the trial of this case and thereupon the [fol. 427] plaintiff offered its further evidence and rested the case.

Thereupon each and all of the above specified defendants read into the record their separate demurrer to the plaintiff's evidence.

The court after being fully advised in the premises finds that the separate demurrer of the defendant E. F. Adams and the separate demurrer of the defendant G. W. Lyon should be sustained, and that the separate demurrer of the defendants C. L. King, A. B. Ewing, H. F. Ferry, L. D. Hadley, and C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, should be over-ruled.

It is thereupon by the court ordered and decreed that the separate demurrer of the defendant E. F. Adams and of the defendant G. W. Lyon be and the same are hereby sustained.

To which ruling and judgment of the court the plaintiff duly excepts and excepted.

It is further ordered and decreed by the court that the separate demurrer of the defendants C. L. King, A. B. Ewing, H. F. Ferry, L. D. Hadley and C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, be and the same are hereby over-ruled, to which ruling and judgment of the court the defendants C. L. King, A. B. Ewing, H. F. Ferry and L. D. Hadley, and C. L. Har-

ris, executor of the last will and testament of T. A. Kramer, deceased, duly excepts and excepted.

Thereupon the defendants C. L. King, A. B. Ewing, H. F. Ferry, L. D. Hadley and C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, by and with the consent of all parties offered in evidence on their behalf all of the general evidence which they had offered in the trial of the case of G. L. Ramsey versus E. F. Adams et al [fol. 428] and their further evidence and rested the case.

And thereupon the plaintiff offered in rebuttal all of the general evidence offered in rebuttal on behalf of the plaintiff in the case of G. L. Ramsey versus E. F. Adams et al and rested the case.

The court after being duly advised in the premises and after due and careful consideration of the evidence finds that each and all of the allegations — the plaintiff's petition as between the plaintiff and the defendants C. L. King, H. F. Ferry, A. B. Ewing, and L. D. Hadley are true and that the plaintiff is entitled to recover judgment against the defendant C. L. King for the sum of $27,211.96 together with six per cent interest thereon from this date and for the costs of this action; the court further finds that the plaintiff is entitled to recover judgment against H. F. Ferry for the sum of $27,211.96 together with six per cent interest thereon from this date and for the costs of this action; the court further finds that the plaintiff is entitled to recover against the defendant A. B. Ewing for the sum of $27,211.96 together with six per cent interest thereon from this date and for the costs of this action; the court further finds that the plaintiff is entitled to recover judgment against L. D. Hadley for the sum of $27,211.96 together with six per cent interest thereon from this date and for the costs of this action.

The court, after being fully advised in the premises, finds that at the time referred to in plaintiff's amended petition, the Butler County State Bank of El Dorado, Kansas, was a banking corporation, duly organized and existing under and by virtue of the laws of the state of Kansas, doing business at El Dorado, Kansas, and that the deposits alleged to have been made, in plaintiff's petition, were made [fol. 429] in the amounts and at the time as alleged in the plaintiff's amended petition, and that at all of the time as

alleged in plaintiff's amended petition, T. A. Kramer was one of the duly elected and qualified directors of said bank and that the state bank commissioner of the State of Kansas closed said Butler County State Bank of El Dorado, Kansas, on the 30th day of March, 1923, and that thereafter ascertained and found the said bank to be insolvent and placed the same in the hands of a receiver; and that said bank at all times since has been in the hands of the banking department of the State of Kansas and in process of liquidation.

The court further finds that at the time of the making of the deposits as alleged in plaintiff's amended petition, that said bank was insolvent and in a failing condition and that on the day and date when said bank was closed by the state bank commissioner of the State of Kansas, that plaintiff had on deposit in said bank in a checking account the sum of $31,582.98.

The court further finds that at the time of the making of the deposits set out in the plaintiff's amended petition, that by reason of the physical and mental incapacity of T. A. Kramer, that said T. A. Kramer was unable to make any examination of the books and records of the Butler County State Bank of El Dorado, Kansas, and had no personal knowledge of the making of such deposits and that by reason of such physical and mental incapacity did not assent to the reception of such deposits by said bank and that as against the defendant, C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, that plaintiff is not entitled to recover in this action and that such defendant should recover judgment against the plaintiff for the costs herein expended.

[fol. 430] It is therefore by the court ordered, decreed and adjudged, That the prayer of plaintiff's amended petition as against the defendant, C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, be denied and that such defendant have judgment against the plaintiff for all of his costs herein expended.

To which such ruling and judgment of the court, the plaintiff duly excepts and excepted.

It is therefore by the court ordered, decreed, and adjudged that the plaintiff do have and recover judgment against the defendant C. L. King for the sum of $27,211.96

together with six per cent interest thereon from this date and for the costs of this action.

It is therefore by the court ordered, decreed and adjudged that the plaintiff do have and recover judgment against the defendant H. F. Ferry for the sum of $27,-211.96 together with six per cent interest thereon from this date and for the costs of this action.

It is therefore by the court ordered, decreed and adjudged that the plaintiff do have and recover judgment against the defendant A. B. Ewing for the sum of $27,211.96 together with six per cent interest thereon from this date and for the costs of this action.

It is therefore by the court ordered, decreed and adjudged that the plaintiff do have and recover judgment against the defendant L. D. Hadley for the sum of $27,-211.96 together with six per cent interest thereon from this date and for the costs of this action.

Whereof let execution issue.

To all of which rulings and judgment of the court the defendant C. L. King, A. B. Ewing, H. F. Ferry, and L. D. Hadley duly excepts and excepted.

In the trial of this case, in the rulings, decisions, and judgments made and rendered the court applies the law as em-[fol. 431] bodied in the written instructions given to the jury by the court in the trial of the case of G. L. Ramsey versus E. F. Adams et al. and is governed thereby as to the law in this decision, and all of the general evidence offered herewith by the plaintiff and the defendants in this case which evidence had been offered in the case of G. L. Ramsey versus E. F. Adams et al. is received, subject to the same objections and rulings as were made in such case of G. L. Ramsey versus E. F. Adams et al.

Thereupon this cause comes on for further hearing on the separate motions of C. L. King, H. F. Ferry, A. B. Ewing and L. D. Hadley to set aside the judgment and decree of the court made and rendered in this action and to grant unto such defendants a new trial herein. And the court after being duly advised in the premises finds that such separate motions should be overruled.

It is therefore ordered and decreed and adjudged by the court that the separate motions of the defendants C. L. King, H. F. Ferry, A. B. Ewing and L. D. Hadley for a new trial be and the same are hereby over-ruled.

To which ruling and judgment of the court such defendants duly except and excepted.

Thereupon this cause comes on for further hearing on the motion of the plaintiff to set aside the judgment and decree of the court in favor of the defendant, C. L. Harris as executor of the last will and testament of T. A. Kramer, deceased, and against the plaintiff, so made and rendered in this action, and to grant unto the plaintiff a new trial.

The court, after being fully advised in the premises, finds that such motion should be over-ruled.

It is therefore by the court ordered, decreed and adjudged, that the motion of the plaintiff to set aside the [fol. 432] judgment and decree of the court heretofore rendered in this cause in favor of the defendant, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, be and the same hereby is overruled.

To which ruling and judgment of the court the plaintiff duly excepts and excepted.

Notices of Appeal

Notice of Appeal

Notices of appeal was duly served by the plaintiff in the case of G. L. Ramsey v. E. F. Adams, et al., as to the judgment and decree of the court in favor of the defendant C. L. Harris, and as to the judgment and decree of the court sustaining the demurrer of the defendant E. F. Adams to the plaintiff's evidence, and notices of appeal were duly served by certain of the defendants all of which were filed and the case docketed in the Supreme Court of the State of Kansas.

Similar appeals were taken by the various parties in the case of The Ramsey Petroleum Company v. E. F. Adams, et al., and were duly filed and such case docketed in the Supreme Court of Kansas.

To the defendant C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, and to S. M. Brewster his attorney of record:

You and each of you are hereby notified that the plaintiff appeals to the Supreme Court of the State of Kansas

from the rulings, orders, and decisions of the District Court of Butler County, Kansas, made and rendered in the trial of this cause on the 15th, 16th, 17th, 18th, 19th, 20th, and 22nd, days of March, 1926, both inclusive and from the judgment and decree of the District Court of Butler County, Kansas, made and rendered in this cause on the 27th day of March, 1926, in overruling plaintiff's motion for a new [fol. 433] trial, and from the judgment and decree of the District Court of Butler County, Kansas, made and rendered in this cause on the 27th day of March, 1926, in rendering judgment in favor of such defendant and against this plaintiff for the cost of this action.

Notice of Appeal

To the defendant E. F. Adams and to J. B. McKay, her attorney of record:

You and each of you are hereby notified that the plaintiff appeals to the Supreme Court of the State of Kansas, from the rulings, orders and decisions of the District Court of Butler County, Kansas, made and rendered in the trial of this cause on the 15th, 16th, 17th, 18th, 19th, 20th and 22nd days of March, 1926, both inclusive and from the judgment and decree of the District Court of Butler County, Kansas, made and rendered in the above entitled cause in sustaining the demurrer of the defendant E. F. Adams to plaintiff's evidence.

Notice of Appeal

To the plaintiff G. L. Ramsey and John J. Jones and K. M. Geddes, his attorneys, and defendant C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, and S. M. Brewster, his attorney:

You and each of you are hereby notified that the defendant, L. D. Hadley, intends to and does hereby appeal to the Supreme Court of the State of Kansas from the orders, rulings, and decisions made and entered into by the District Court of Butler County, Kansas, during the trial of this cause in said court which occurred on the 15, 16, 17, 18, 19, 20 and 22nd days of March, 1926, both inclusive, and from the judgment and decree of said district court made and

[fol. 434] entered into on the 27th day of March, 1926, overruling the motions of this defendant for a new trial of said cause, and from the judgment and decree of said district court made and entered into in this cause on the 27th day of March, 1926, in rendering judgment in favor of the plaintiff and against the defendant and from each and every other ruling, order, judgment and decision made and entered into by said district court in this cause, adverse to this defendant.

To the plaintiff G. L. Ramsey and John J. Jones and K. M. Geddes, his attorneys, and defendant C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased and S. M. Brewster, his attorney:

You and each of you are hereby notified that the defendants, C. L. King, H. F. Ferry and A. B. Ewing intend to and do hereby appeal to the Supreme Court of the State of Kansas from the orders, rulings and decisions made and entered into by the District Court of Butler County, Kansas during the trial of this cause in said court which occurred on the 15, 16, 17, 18, 19, 20 and 22 days of March, 1926, both inclusive and from the judgment and decree of said district court made and entered into on the 27th day of March, 1926, overruling the motions of these defendants for a new trial of said cause, and from the judgment and decree of said district court made and entered into in this cause on the 27th day of March, 1926, in rendering judgment in favor of the plaintiff and against said defendants and from each and every other ruling, order, judgment and decision made and entered into by said district court in this cause adverse to these defendants or either or any of them.

[fol. 435] Notice of Appeal

To the plaintiff G. L. Ramsey and John J. Jones and K. M. Geddes, his attorneys, and defendant C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, and S. M. Brewster, his attorney:

You and each of you are hereby notified that the defendants, C. L. King, H. F. Ferry and A. B. Ewing intend to and do hereby appeal to the Supreme Court of the State of Kansas from the orders, rulings and decisions made and en-

tered into by the District Court of Butler County, Kansas during the trial of this cause in said court which occurred on the 15, 16, 17, 18, 19, 20 and 22 days of March, 1926, both inclusive, and from the judgment and decree of said district court made and entered into on the 27th day of March, 1926, overruling the motions of these defendants for a new trial of said cause, and from the judgment and decree of said district court made and entered into in this cause on the 27th day of March, 1926, in rendering judgment in favor of the plaintiff and against said defendants and from each and every other ruling, order, judgment and decision made and entered into by said district court in this cause, adverse to these defendants or either or any of them.

In the compilation of this abstract of record certain of the exhibits offered in evidence are very voluminous and contain a tremendous amount of matter that has no vital bearing on the issues involved in the case and for that reason from those exhibits we have simply taken extract of that part which was germane to the issues in the case.

We have not set out any pleadings in the case of Ramsey Petroleum Company versus E. F. Adams et al., other than [fol. 436] the plaintiff's amended petition and the journal entry of judgment, including the ruling of the various motions for a new trial for the reason that the various pleadings following the amended petition which were filed both on behalf of the respective defendants and of the plaintiff are identical in kind and content and the ruling of the court on the same is identical with such pleading and such ruling as they appear in the case of G. L. Ramsey versus E. F. Adams et al.

The above and foregoing contain such part and so much of the pleading rulings of the court and of the testimony as is deemed necessary for the consideration of this case by the Supreme Court of Kansas.

Respectfully submitted.

John J. Jones, of Chanute, Kansas, B. R. Leydig and K. M. Geddes, of El Dorado, Kansas, Attorneys for G. L. Ramsey and the Ramsey Petroleum Company Appellants.

[fol. 437] SPECIFICATIONS OF ERROR

1. Abuse of discretion of the court.

2. That the verdict of the jury as to C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, is contrary to the evidence and not supported by the evidence.

3. That the judgment rendered on the verdict in favor of the defendant, C. L. Harris, as executor, is contrary to the evidence and not supported by the evidence, and is contrary to the law of the case.

4. The court erred in admitting incompetent, irrelevant and immaterial testimony offered by the defendant, C. L. Harris, as executor, and objected to by the plaintiff.

5. That the court erred in excluding the competent and material evidence offered by the plaintiff as against the defendant E. F. Adams.

6. That the court erred in overruling plaintiff's motion at the close of defendant's case, to strike out and take from the consideration of the jury all of the testimony of the witnesses as regards the physical and mental condition of T. A. Kramer.

7. That the court erred in admitting incompetent, irrelevant and immaterial testimony offered by the defendant and objected to by plaintiff.

8. That the court erred in overruling plaintiff's motion for a new trial and in rendering judgment for the defendant, C. L. Harris, as executor, denying the plaintiff the relief prayed for in the amended petition.

[fols. 438 & 439] 9. Errors of law occurring on the trial of the case.

10. That the court erred in overruling plaintiff's separate demurrers to the separate answers of each and every defendant.

11. That the court erred in excluding competent and material testimony offered by the plaintiff as against the defendant, C. L. Harris, as executor, and objected to by such defendant.

12. Erroneous rulings of the court occurring on the trial of the case.

13. The court erred in sustaining the demurrer of E. F. Adams to plaintiff's evidence.

14. Erroneous instructions of law given by the court to the jury and duly excepted to by the plaintiff.

15. The court erred in refusing to give certain instructions requested in writing by the plaintiff as to the law of the case.

[fols. 440 & 441] In Supreme Court of Kansas

No. 27397

Alice M. Ramsey, Appellant,

v.

E. F. Adams et al., Appellees

Judgment—February 12, 1927

These causes come on for decision and thereupon it is ordered and adjudged that judgment in favor of T. L. Harris as executor of the estate of T. A. Kramer deceased, be reversed and remanded with instructions to render judgment for the plaintiff, and in other respects the judgment is affirmed. It is further ordered that the defendants pay the costs of this case in this court taxed at $— and hereof let execution issue.

[fol. 442] IN SUPREME COURT OF KANSAS

No. 27109

G. L. RAMSEY, Appellant and Cross-Appellee,

v.

E. F. ADAMS, C. L. KING, A. B. EWING, H. F. FERRY, L. D. Hadley, C. L. Harris, Executor of the Last Will and Testament of T. A. Kramer, Deceased, Appellees and Cross-Appellants

No. 27213

THE RAMSEY PETROLEUM COMPANY, Appellant,

v.

E. F. ADAMS et al., Appellees

No. 27217

THE RAMSEY PETROLEUM COMPANY, Appellee,

v.

E. F. ADAMS et al., Appellees (C. L. KING and H. F. FERRY, Appellants)

No. 27230

THE RAMSEY PETROLEUM COMPANY, Appellee,

v.

E. F. ADAMS et al. (L. D. HADLEY), Appellants

OPINION—Filed February 12, 1927

Syllabus by the Court

1. Banks and Banking—Reception of Deposits After Knowledge of Insolvency—Liability of Directors—Constitutionality of Act. The statute (R. S. 9-163, 9-164) which provides, among other things, that any officer or director of any banking institution who shall assent to the reception of deposits after he shall have

knowledge that the institution is insolvent or in failing circumstances, considered and held not to violate the due process clause of the federal constitution.

[fol. 443] 2. Same—Reception of Deposits After Knowledge of Insolvency—Liability of Director—Sufficiency of Evidence. In actions to recover from the officers and directors of a defunct bank the amounts of several deposits, under the statute which provides that any officer or director of a bank who accepts or assents to the reception of deposits by the bank when he knows of its insolvency, the evidence considered and held sufficient to sustain a general verdict which included a finding that the bank was insolvent and in a failing condition at the time the deposits were received.

3. Same—Liability of Directors—Incapacity as Defense. A special defense that a director who had served as such for several years was incapacitated from attending to business and therefore not liable, considered and held to be unavailing.

4. Same—Liability of Directors—Conduct of Bank Commissioner as Defense. And further, it was no defense that the bank commissioner and his deputies visited the bank from time to time, made investigation and inquiry into the condition of the bank's affairs and with knowledge of its condition permitted the bank to operate.

5. Same—Liability of Director—Person Wrongfully Carried in Reports as Director. A, who had previously been a director of the bank ceased to be a stockholder November 16, 1920, and was replaced on the board of directors by another January 4, 1921. The deposits in question were made during the month of March, 1923, and the bank closed the 30th of that month. Held, A was not liable under the provisions of R. S. 9-163, 9-164, on account of her name being carried in certain bank reports, directories and registers as an officer or director of the defunct bank during two or three years after she ceased to be a director.

6. Same—Trial Generally. Various alleged errors considered and held not to be of substantial merit.

Appeal from Bulter District Court, Allison T. Ayres, Judge. Opinion Filed February 12, 1927. Affirmed in part and Reversed in Part.

John J. Jones, of Chanute, B. R. Leydig and K. M. Geddes, both of El Dorado, for G. L. Ramsey and The Ramsey Petroleum Company; C. A. Leland and L. J. Bond, both of El Dorado, for appellant L. D. Hadley.

C. L. Harris, of El Dorado, Bennett R. Wheeler, S. M. Brewster and John L. Hunt, all of Topeka, for appellee C. L. Harris executor of the estate of T. A. Kramer, deceased; J. B. McKay, of El Dorado, for appellants C. L. King and H. F. Ferry, and appellee E. F. Adams.

Ed T. Hackney, of Wellington, W. E. Pepperall, C. C. Davidson, Benj. F. Hegler, A. V. Roberts and Austin M. Cowan, all of Wichita, as amici curiæ.

The opinion of the court was delivered by

Hopkins, J.:

These were actions to recover from the officers and directors of a defunct bank the amounts of several deposits, [fol.444] under the statute which provides, among other things, that any officer or director of a bank who receives or assents to the reception of deposits by it when he knows it is insolvent or in failing condition is liable therefor. (R. S. 9-163, 9-164.) The question of the constitutionality of this statute was considered in some of the same cases on a previous hearing. (Ramsey Petroleum Company v. Adams, 119 Kan. 844, 241 Pac. 433.)

The facts, briefly, are these: The Butler County State Bank was organized in 1909 by J. B. Adams, who was its principal stockholder and managing officer. Mr. Adams died in 1921 while an examination of the bank was in progress. Previous to his death the bank had some heavy excess loans. Its general condition, which was not good, did not improve, and on March 30, 1923, it was closed by the bank commissioner. The defendants, except Mrs. E. F. Adams, were officers and directors of the bank at the time it was closed. The plaintiffs were depositors therein.

Trial resulted in judgment against all of the defendants except Mrs. Adams, George W. Lyon, and C. L. Harris, as executor of the estate of T. A. Kramer, deceased. De-

murrers to the evidence were sustained on behalf of Mrs. Adams and Lyon. Verdict was returned for Harris and judgment rendered thereon. The plaintiffs appeal from the judgment sustaining the demurrer of the defendant Adams and from the judgment in favor of the defendant Harris. The defendants against whom judgment was rendered also appeal.

The defendants again question the constitutionality of the statute under which the proceedings were brought. They maintain that the statute is void in that it deprives them of property without due process of law. The question was given serious consideration on the former hearing and need not now be treated at length. A contention that the statute is analogous to a Wisconsin statute considered by the supreme court of the United States in Schlesinger v. State of Wisconsin, 270 U. S. 230; 46 Supt. Ct. Rep 260; 70 L. Ed. 301, may be briefly noticed. The statute of Wisconsin to which reference is made provided that any transfer of any substantial part of a grantor's property within six years prior to his death without an adequate consideration should be construed to have been made in contemplation of death and subject to the inheritance tax. In the Schlesinger case the decedent made a transfer of some five million dollars of his property, or substantially all of his estate, to relatives [fol. 445] within from two to four years of his death. A tax was imposed upon his estate upon these gifts. The lower court found that actually the testator did not make the transfers in contemplation of death, but that the statute raised a conclusive presumpion that he did. On appeal the case was affirmed by the supreme court of Wisconsin, but was reversed by the supreme court of the United States. In the opinion by the latter, it was said:

"The challenged enactment plainly undertakes to raise a conclusive presumption that all material gifts within six years of death were made in anticipation of it and to lay a graduated inheritance tax upon them without regard to the actual intent. The presumption is declared to be conclusive and cannot be overcome by evidence. It is no mere prima facie presumption of fact."

The Wisconsin statute is not analogous to ours. Ours does not undertake to raise a conclusive presumption as does the Wisconsin statute. The Wisconsin statute pro-

vides no escape from its provisions; ours does. Ours provides a mere prima facie presumption of fact which may be overcome by a showing on the part of the director of having examined into the affairs of the bank to know if possible its condition or some other bona fide reason that he (the director) was physically or otherwise unable to know its condition. The other provision of our statute which holds the director to have knowledge of the bank's condition because of his failure to discharge his duties is a declaration of substantive law, i. e., it creates an obligation on the part of the director to do certain things which if done will relieve him of liability to the depositor. It also gives the depositor a right to recover from him if he fails in this regard to do his duty. In Ramsey Petroleum Company v. Adams, supra, it was said in the opinion:

"But we cannot agree that the statutory provision under present scrutiny is justly subject to the criticism leveled against it. The provision reads: 'And upon failure of any such person (officer or director) to discharge such duty (to examine the bank) he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank or that it was in failing circumstances.' This is not an arbitrary edict of the legislature making evidence out of facts which are without inherent evidential significance, nor an arbitrary perversion of the rules of evidence. It is rather a statutory declaration of substantive law. We have many such rules of substantive law touching civil liability. Analogous liabilities are imposed by substantive law, even where there is little or no element of actual wrongdoing or negligence on the part of those subjected thereto." (pp. 848 and 849.)

In Orient Insurance Company v. Daggs, 172 U. S. 557, 43 L. Ed. 552, it was said:

[fol. 446] "It is one thing to attribute effect to the convention of parties entered into under the admonition of the law, and another thing to give to circumstances, maybe accidental, conclusive presumption and proof to establish and force a result against property or liberty." (p. 566.)

We conclude that the Schlesinger case is not controlling here and adhere to our former decision that the statute under consideration does not deprive the defendants of property without due process of law.

The plaintiffs contend that they were denied recovery against C. L. Harris as executor of the last will and testament of T. A. Kramer, deceased, on the sole ground of the defense of the physical incapacity of Kramer. Harris contends that the evidence submitted was insufficient to show that the bank was insolvent during the month of March, 1923, the time during which the deposits complained of were accepted; also that Kramer was not liabile because he was physically incapable of investigating and knowing the condition of the bank.

Harris maintains that the condition of the bank which ultimately led to its closing was caused primarily by an oil boom which enveloped Butler county some years previous; that farmers who had been hard pressed to earn a living from the land found themselves possessed of large incomes from oil royalties; that the banks of the county were overflowing with money; that the large petroleum producers of the world such as the Standard Oil Company, the Empire Gas and Fuel Company, the Skelly Company and many others made large investments there; that new industries connected with the production of oil were daily coming into the field, and that Butler county was in the midst of a tremendous financial boom; that refineries were being built, factories for the making of things used in the oil fields were being established; that the Santa Fe Railroad Company was constructing a new line from Emporia for the better handling of the freight business; that various new enterprises came into being and money was plentiful; that the financial condition from a practical standpoint required the banks to make excess loans in order to take care of the business. He then argues that with this financial condition existing, the banking department knew of and did not disapprove of the excess loans; that the excess loans were made largely by J. B. Adams; that a representative of the banking department was in El Dorado examining the bank at the time of Adams' death; that the bank commissioner was [fol. 447] informed of the death of Mr. Adams and knew the condition of the bank, but took no steps to close it; that the bank at the time of Mr. Adams' death had deposits subject to check of nearly $1,400,000, and certificates of deposit amounting to almost $400,000, and resources amount-

ing to $2,283,000; that the bank commissioner continued in close touch with the affairs of the bank and knew of the excess loans and overdrafts; that the bank continued to meet the demands of its creditors in the usual customary way and was not believed to be in an insolvent condition or in failing circumstances in July, 1922 (the time when Mr. Kramer went East on account of ill health). It is contended that there is no proof that its officers and directors at that time knew it to be in failing circumstances or insolvent; that there had been no hint from the bank commissioner to Mr. Kramer in July, 1922, that the bank was insolvent or in failing circumstances; no suggestion that the excess loans were uncollectible nor a suggestion to Mr. Kramer that the bank should close its doors. It is contended with much vigor that there was no testimony showing that the bank was insolvent at or during the time of the receipt of the deposits in question; that there was no proof that the bank was insolvent when Mr. Kramer went away, no claim that he had not performed his full duty as a director as required by the statute, and that from the date he was stricken in Boston, shortly after he left El Dorado in July, 1922, to the date of his death in July, 1923, he was incapacitated, and by reason of his physical and mental disability unable to make any examination into the affairs of the bank or pay any attention to its affairs. Harris sums up the evidence of Kramer's incapacity as follows:

"The testimony that Kramer was away; that he was sick; that he was unable to examine the books of the bank; that the doctors would not permit him to attend to business; that his mind was dulled by toxins and by opiates; that his physical condition was such that he could not direct his mind toward business affairs, and that outside of the sending to him of the oath of office, he had absolutely no communication with any director or officer of the bank in reference to bank matters, establishes beyond any controversy that so far as actual knowledge of the condition of the bank was concerned he had no information in reference to the condition of the bank other than what he may have possessed at the time when he left."

While giving full consideration to all that is shown and argued in behalf of Mr. Kramer, we are compelled also to give due consideration to admitted facts shown by the

record which rendered him liable as a director and which necessarily carries such liability to his executor. There [fol. 448] was evidence that Mr. Kramer on August 28, 1920, joined with certain other directors in making a financial statement of the condition of the bank. This statement disclosed five of the principal excess loans which it is claimed had largely to do with the ultimate failure of the bank; that on March 5, 1921, he signed another financial statement which was sent to the bank commissioner, disclosing the same excess loans and others; that December 31, 1921, March 18, 1922, and June 6, 1922, he signed other financial statements which were sent to the bank commissioner showing the condition of the bank as of the date of each statement; that each succeeding statement showed the excess loans above mentioned and many others that were in the bank at the time it closed; that Mr. Kramer attended the quarterly meeting of the board of directors of the bank January 10, 1921, and signed a written report sent to the bank commissioner, showing the excess loans above mentioned, the amount of each and many others; that he attended quarterly meetings of the board of directors in July, 1921, January 5, 1922, April 7, 1922, and July 6, 1922, each time signing a report to the bank commissioner, reflecting the condition of the bank; that the excess loans April 7, 1922, amounted approximately to $774,000; July 6, 1922, $771,000; that the statements sent to the bank commissioner and reports of the proceedings of the quarterly meetings of the directors referred to bear his signature as a director of the bank. There was evidence that the bank was examined by a deputy bank examiner in September, 1921. The report which he transmitted to the bank commissioner, which was signed by Mr. Kramer, listed and specifically named excess loans aggregating $820,000. In this statement, the deputy bank examiner made a requirement under the head of "Notice to Officers," which reads:

"Requirements

"Second. Excess loans amounting to $820,128.91 are held by your bank in violation of the banking laws. You are hereby notified to reduce said loans to the legal limit within sixty days from the date hereof.

* * * * * * *

"These excess loans are of long standing and must be reduced to the legal limit. Any that are not within the limit by January 10, 1922, must be charged out of the bank.

"See attached sheet for further requirements, the same being as though written hereon.

"Dated September 17, 1921. By order of the bank commissioner of Kansas.

H. E. Wright, Deputy Bank Commissioner. C. S. Bowman.

[fol. 449] "We acknowledge receipt of the notice to officers and directors, of which the above is a true copy, and we hereby agree to comply with the terms thereof and to notify the bank commissioner when the same has been done.

"C. L. King, President; A. B. Ewing, Cashier. L. D. Hadley, T. A. Kramer, C. L. King, A. B. Ewing, H. F. Ferry, Directors."

Additional requirements made at the same time were:

"Under no condition make further excess loans and do not increase any present excess. Make no transfers of stock until permission is secured from the department. Your draft list is excessive both as to number of items and as to total."

The same deputy again examined the bank in January, 1922, and transmitted to the bank commissioner a report signed by Mr. Kramer listing in detail approximately the same excess loans, to the amount of $782,000. This report, acknowledged by Mr. Kramer, contained these statements:

"Seventeen excess loans amounting to $782,585.69 are held by your bank in violation of the banking laws. You are hereby notified to reduce said loans to the legal limit within sixty days from the date hereof.

* * * * * * *

"Fourth. Your overdrafts are too large, too many, and of too long standing, charge off those of long standing and keep out chronics.

"Fifth. Your Other Real Estate account contains items carried in violation of the law. Attend to this as soon as possible.

"Sixth. Your loans are short. Put in balance as soon as possible.

* * * * * * *

"Ninth. Your Other Bonds account contains items that are not legal investments for a state bank. Correct this.

* * * * * * *

"We hereby acknowledge receipt of the notice to officers and directors of which the above is a true copy, and we do hereby agree to comply with the terms thereof and to notify the bank commissioner when the same has been

"C. L. King, President; H. F. Ferry, Cashier. L. D. Hadley, C. L. King, H. F. Ferry, A. B. Ewing, T. A. Kramer, Directors."

The evidence indicates clearly that Mr. Kramer was personally familiar with the condition of the bank from the first of the year, 1921, to the time he attended the last meeting of the board of directors in July, 1922. It is admitted that when he left El Dorado some days thereafter on his eastern trip, he knew the condition of the bank. The same condition was reflected when the bank was closed March 30, 1923. It had not changed. The same overdrafts were [fol. 450] there; the same unpaid notes; the same excess loans. Mr. Kramer had for years been attorney for the bank. He was reputed a lawyer of marked ability. He must have known the condition of the bank during all of the time mentioned, and it may be observed in passing that because of his marked ability and general reputation his responsibility was the greater. Depositors, no doubt, had greater confidence in the bank because of his being a director. But it is argued that, "from the date he was stricken in Boston in August, 1922, until the date of his death, in July, 1923, he was incapacitated and by reason of his physical and mental disability unable to make any examination into the affairs of the bank or to pay any attention to its affairs." Two things appear clear. The bank's condition had not changed, and it is apparent that he did keep in touch with its affairs, because on January 20, 1923, two months before the bank was closed, he signed the oath of the director,

placed in the proper blank in his own handwriting his street address and post-office address, swore to it before a notary public and sent it to the bank commissioner. It was filed in the bank commissioner's office only thirteen days later than the oath of his codirectors who had been elected at the same meeting.

The evidence shows no substantial change in the bank's condition from the time Mr. Kramer left El Dorado until the time the bank closed. It is not unreasonable to conclude from the evidence that the bank was insolvent when he left July, 1922; insolvent when he again took oath as director in January following, and insolvent when it closed at the end of March. He must have known the bank was insolvent when he took the oath as director in January, 1923. He knew that it was being kept open all of this time and that deposits were being received. There was evidence that the bank's condition was sufficiently serious in 1921 that the levy of an assessment of 50 per cent on the stockholders was required within ten days after an examination by the banking department. The reports showing the kind and character of the various loans, the security given, the date when the paper was made, the date of its maturity, whether it was of long standing or otherwise, and whether the general indebtedness was of an increasing character, showing when the security was exhausted and applied to the liquidation of the debts and evidence showing that in some cases the receiver was able to collect only fifty per cent of the indebtedness, was all competent [fol. 451] as showing the insolvent condition of the bank. The contention that there was no evidence showing that the bank was insolvent or in failing circumstances cannot be sustained.

The jury returned the following special verdict:

"We, the jury empaneled and sworn in the above entitled cause, do upon our oath find for the defendant, C. L. Harris, executor of the estate of T. A. Kramer, deceased, not liable on account of said T. A. Kramer being physically unfit to know the conditions of The Butler County State Bank at the time the deposits were made by the plaintiff that are now in controversy."

It is contended by the plaintiffs that this verdict was induced by the attitude of the court and the instructions given. The instructions complained of read:

4-A

"This defendant further alleges that on the — day of August, 1918, the said T. A. Kramer, while living in the state of California, was taken sick and compelled to undergo a severe surgical operation, from which he never fully recovered; that on the — day of May, 1920, he returned to El Dorado, Kansas, where he again underwent a serious abdominal operation, on account of which he was unable to attend to any business and from which he never fully recovered; that about the 10th day of July, 1922, he left El Dorado for the purpose of rest and recuperation, and on August 15, 1922, in the city of Boston, Mass., he was again compelled to undergo a severe operation; that in November, 1922, he was removed to East St. Louis, where in December another operation was performed on him, and his condition gradually grew worse until the date of his death, July 23, 1923; that from the time of his first operation until the day of his death he was unable to attend to any business of importance; that by reason of his condition, he was unable to return to El Dorado at any time after his operation in Boston on August 16, 1922; that his suffering was so intense and his physical condition of such a character that it was impossible for him to direct him mind for any length of time to any business matter or give any attention to business affairs; that by reason of these facts and circumstances, it was impossible for him to give any attention to the affairs of he Bulter County State Bank, and during all of said period he had no access to the books and records of said bank and was in no condition, physically or mentally, to make any examination of the business or condition of said bank, and it was impossible for him to assent to the acceptance of any deposits in said bank; that during all of said period he was constantly attended by his relatives who, acting under the advice of his physician, kept all business matters from him as far as possible; that it was impossible for him to give any serious attention or consideration to business matters without seriously injuring his health and shortening his life."

22

"The defendant Harris, as executor of the estate of T. A. Kramer, deceased, interposes the defense that the said Kramer for many months prior to the closing of said [fol. 452] bank was absent from Butler county, Kansas, on account of sickness and was unable to return to said county, or to exercise any control over the affairs of the Butler County State Bank, or to in any way examine into its affairs, or control, or direct its management; and in this connection you are instructed that the burden of proof is upon the said defendant to establish this defense by a preponderance of the evidence. That is, the defendant Harris must prove by a preponderance the fact that the said Kramer was, under conditions and circumstances which he could not control, detained from Butler county, on account of sickness, and was not on account of such sickness able to return to said county, and was not, thereby, able to be present and know as to the condition and management of said bank and to give his assistance and advice in the management and control of the same."

23

"You are instructed that if you believe from the evidence in this case that the said T. A. Kramer was at the time said deposits were made, and had been for some time prior thereto, in a condition of health that made it impossible for him, on account of his mental or physical condition, to make an examination into the affairs of said bank, and if you find that he was a director of said bank at the time of the reception of such deposits, then before he can be held liable under the statute for such deposits, it must be shown by a preponderance of the evidence that he had knowledge of the reception of the deposits in question, and with such knowledge assented to the making of such deposits, and in considering whether such knowledge and assent was had by the said T. A. Kramer, you are not to take into consideration the fact that he failed to make the examination of said The Butler County State Bank as required by law, if you find as a fact that he was at such time unable, because of his physical or mental condition, to make such examinations."

"And you are instructed that if you believe from the evidence that the said T. A. Kramer was in the condition described in Instruction No. 4-A, above set out, and was by reason of such condition unable to give any attention to the affairs of said The Butler County State Bank, and was in no condition physically or mentally to make any examination into the business or the condition of said bank, then, and in that event, as a matter of law, he would not be required to make any examination and is not chargeable for any failure so to do."

"You are instructed that if you believe that the said T. A. Kramer was in the condition set out in the Instruction No. 4-A above, and that acting under the advice of his physicians, all matters of business were kept from him, in order that his health might not be injured by attention to such business, then you are instructed that it would not be incumbent upon him to make the examinations required in section 9-163 of the Revised Statutes of 1923, heretobefore quoted, and he could not be held to have given his assent to the reception of such deposits, unless the plaintiff in [fol. 453] this case has shown by a preponderance of the evidence that he had actual personal knowledge of the making of the deposits herein and that he actually authorized such deposits to be received or that he actually assented to the reception of such deposits."

It is perfectly apparent that Mr. Kramer's illness was neither sudden nor temporary, and that the verdict must have been influenced by the quoted instructions. Mr. Kramer was suffering in 1918 with the same disease that finally caused his death, yet he continued to attend to its business, to accept the privileges, the benefits the honor and the emoluments of the office of a director.

A director of a bank like the one here under consideration, knowing that it has for years during his directorate carried excess loans of from $650,000 to $820,000, acknowledging time after time that it was operating in violation of law and necessarily knowing that it is insolvent, cannot be heard to say that by reason of his physical condition, he did not know its condition. He knew and necessarily as-

sented to the reception of the deposits and thereby incurred the liability that the statute imposes on him. Briggs v. Spaulding, 141 U. S. 132, 35 L. Ed., 662, is cited and relied on by Harris as sustaining his contention of nonliability. There one officer of the bank was given a leave of absence, went away and died before the expiration of the leave of absence. The court held that it was within the power of the board of directors of the bank to grant a leave of absence, and that the director could not be held liable for the things that occurred in the bank in his absence which caused the insolvency. Two other directors who were newly elected to the board approximately ninety days before the insolvency of the bank, were relieved from responsibility because no different condition existed in the bank at the time it closed and at the time they became members of the board. A vice president and director was relieved from liability, having been elected in May, 1881, and being an invalid at the time of his election and unable to transact business, the bank having closed it doors in the early part of 1882. This case is distinguished in Rankin v. Cooper, 149 Fed. 1011, where it was said:

"The mere fact that a director of a national bank does not attend to his duties by reason of continued ill health or other business engagements does not necessarily relieve him from liability for losses sustained by the bank through the failure of the directors to exercise proper care and supervision over its affairs." (Syl.)

[fol. 454] In the opinion it was stated:

"A special defense is set up by the executor of Logan H. Roots, deceased, on account of ill health and absence from the city, and in that connection, Briggs v. Spaulding, 141 U. S. 132, 11 Sup. Ct., 924, 35, L. Ed., 662, has been referred to. I think a passing illness, temporary in character, is an excuse for the period it lasts, but, if a person becomes a confirmed invalid for a number of years, and unable to attend to the duties of a director, he has no right to hold on to the position and at the same time decline its corresponding responsibilities. By doing so he invites others to trust the bank on the strength of his name, and in such case he ought to bear his share of the consequences growing out of such a dual situation. This is peculiarly applicable to

Colonel Roots because of his high reputation in the community and the great trust that was placed in him as a director, as abundantly appears from the evidence in this case. Nor does it appear from the evidence that Colonel Roots was in fact such an invalid that he could not give any attention to the affairs of the bank. On the contrary, it appears that he attended 46 meetings in 1890; 38 in 1891; 48 in 1892, and 9 in January, 1893. He also in writing indorsed and approved the report of the examining committee of November 25, 1891, signed the letter to the comptroller of January, 16, 1892, was reelected and accepted the office of president in January, 1893, and accepted the office of receiver for this bank when it closed. Defendant Blass in his testimony, says:

" 'Logan H. Roots attended the board meetings whenever he was in the city. Being an old bank man, he was counseled in all matters of the bank by myself and directors. He had access to the books and papers of the bank at all times as a director.' " (p. 1016.)

In construing the statutory liability of directors of national banks, it has been said:

"The statutory liability of directors of national banks as provided in section 5239, is undoubtedly the exclusive rule by which to measure the right to recover damages from directors based upon a loss alleged to have resulted solely from violation by such directors of a duty expressly imposed upon him by provision of the national banking act." (McCormick v. King, 241 Fed. 737, 743. See, also, Savings Bank v. Weulfekuhler, 19 Kan. 60; Yates v. Jones National Bank, 206 U. S. 158, 27 Sup. Ct. Rep. 638, 51 L. Ed. 1002; Thomas v. Taylor, 224 U. S. 73, 32 Sup. Ct. Rep. 403, 56 L. Ed. 673; Bowerman v. Hamner, as Receiver, 250 U. S. 504, 63 L. Ed. 1113; Williams v. Brady, 221 Fed. 118; Williams v. Brady, 232 Fed. 740; 1st Morse on "Banks and Banking," 5 ed. 272.)

Various other questions discussed in the briefs need not be treated at length. The plaintiffs complain of the ruling of the trial court in sustaining a demurrer to the evidence against Mrs. E. F. Adams. Mrs. Adams had previously been a director. On November 16, 1920, she ceased to be a

[fol. 455] stockholder and on January 4, 1921, she was replaced as a director by L. D. Hadley. She was never reelected to the board and held no office in connection with the bank for more than two years before its failure. It was, however, shown that her name was carried as vice president in Rand-McNally's Bank Directory and the Banker's Registry for July, 1922; that her name also appeared as director in some other directories and on some of the bank's stationery. The contention is that she held herself out as an officer and director of the bank and is liable therefor. In view of the fact that she was not a director and had not been a stockholder for more than two years, the contention cannot be sustained.

It is contended on the part of the defendant Hadley, that while he discussed the condition of the bank with the other directors, that he did not at any time know the condition of the bank was dangerous and at all times believed that the slow paper would be collected. Mr. Hadley became connected with the bank in 1914 as a bookkeeper. He became a director of the bank in January, 1921, and so remained until its close March 30, 1923. What has heretofore been said necessarily disposes of his contention.

Various other questions raised by the defendants have been given consideration, but we find nothing which would justify a reversal of the judgment against them.

The judgment in favor of C. L. Harris as executor of the estate of T. A. Kramer, deceased, is reversed and remanded with instructions to render judgment for plaintiffs. Otherwise it is affirmed.

Burch, J., dissenting.

IN SUPREME COURT OF KANSAS

CONCURRING OPINION

Harvey, J. (concurring specially): I concur in the result reached, but wish to add this: Illness of a director is not a defense in an action of this kind. The statute does not make it so. In an effort to make state banks safe for depositors and others who place confidence in the integrity and reliability of bank officials, the legislature has designated certain

duties and created certain responsibilities and liabilities of officers and directors. I see no reason for interpreting the statute to mean a less duty or a less liability than the statute provides. Illness always creates hardships, sometimes serious ones, but it does not relieve the maker of a promissory note of liability thereon. Neither should it relieve directors and officials of banks from the responsibilities and liabilities [fol. 456] imposed by statute upon them by reason of the office or position which they have voluntarily assumed. Especially is this true when there is nothing in the statute to indicate a legislative intention to relieve such officers and directors from liability for that reason.

IN SUPREME COURT OF KANSAS

DISSENTING OPINION

DAWSON, J. (dissenting in part):

This court makes a clear distinction between the present cases and the Schlesinger case, supra. To do so, however, it properly concedes that a director would not be irrevocably bound if he was physically unable to know the bank's condition and unable to discharge his duty to insist on closing the bank because of his knowledge on its insolvency. The quotation in the majority opinion from Orient Insurance Company v. Daggs, supra, indicates that due significance should be given to the effect of circumstances like long-enduring sickness and progressively developing incapacity such as afflicted T. A. Kramer in the last years of his life. I take it that this court does not intend to say point blank that there was no question for a jury to decide touching Kramer's alleged incapacity and the liability or nonliability of Kramer's estate dependent thereon. The court gives a fair summary of the case made in behalf of Kramer's estate in its quotation from the brief of Harris, the executor. The majority opinion also makes an elaborate summary of the evidence against Kramer's estate and emphasizes the point that Kramer continued to sign directors' bank reports for a year or two after his alleged incapacity had become serious and chronic. Such a point was properly worked for all it was worth before the jury, yet in view of all the other evidence it did not convince the

jury of Kramer's physical capacity and consequent responsibility, and I think altogether too much signficance is given to it in this appeal. And since we must or do concede that the constitutionality of our statute is dependent upon its being given an interpretation which will fairly justify a distinction between the liability imposed on a bank director under the Kansas statute and such a liability as was sought to be imposed by the Wisconsin statute in the Schlesinger case, it will not do to impose a liability on Kramer's estate regardless of the jury's verdict. The court's decision should be consistent with itself. To avoid running afoul of the federal constitution, we interpret our statue as not precluding a judicial inquiry touching Kramer's physical condition so as to determine his culpability and the possible liability of his estate; but in doing so we collide with a fundamental principle of appellate re- [fol. 457] view by substituting our judgment for that of the jury and the trial court on the well-defined and conceded issue of fact.

I see no close analogy between the case at bar and Rankin v. Cooper, supra, but the decision in that case went no further than to hold that long-continued ill-health "does not necessarily relieve" a bank director from liability for his official delinquency. I approve of that doctrine. How should his right to be relieved therefrom be determined? By submitting all the pertinent evidence to the triers of the issue of fact, to be sure. Just as Kramer's executor did in this case. And in the Rankin case, the trier of the fact held: "Nor does it appear from the evidence that Colonel Roots was in fact such an invalid that he could not give any attention to the affairs of the bank." Here the triers of fact found precisely to the contrary as to Kramer's condition. And the majority opinion quotes enough of the testimony to support that finding.

In Briggs v. Spaulding, 141 U. S. 132, 35 L. Ed. 662, which was an appeal from a decree dismissing a suit in equity to recover losses by a bank because of alleged neglect of duty on the part of its directors, the special defense of one of the directors, Francis E. Coit, was discussed thus:

"We are not disposed, therefore, to reverse the decree as to defendants Spaulding and Johnson, and although the

case of Francis E. Coit was in some aspects different, and particularly in that he was a director for a longer period, we think it should take the same course. He was elected a director May 20, 1881 * * * He was at the time an invalid, and by reason of his infirmity in health unable to transact business, at least with facility. * * * He was re-elected January 10, 1882. The evidence shows that he had for many years been afflicted with rheumatism * * * While it may be said that Francis E. Coit should not have accepted the position of director, and should not have allowed himself to be reelected, yet upon this question of passive negligence the rule would be an exceedingly rigorous one which made no allowance for the person charged under such circumstances. And upon the whole we do not feel called upon to question the decision as to him."

I fear the consequences of setting at naught the verdict and finding of the tribunal established by our constitution and statutes for the determination of controverted issues of fact. " 'Twill be recorded for a precedent; and many an error, by the same example, will rush into the state." I therefore dissent from so much of this judgment as sets at naught the jury's verdict touching the non-existence of culpable delinquency on the part of Kramer and the consequent nonliability of his estate.

[fols. 458-460] In Supreme Court of Kansas

No. 27,395

W. O. James, Appellant and Cross-Appellee

v.

E. F. Adams et al., Appellees, and C. L. King, H. F. Ferry and L. D. Hadley, Cross-Appellants

No. 27,396

A. E. Lloyd, Appellant and Cross-Appellee,

v.

E. F. Adams et al., Appellee, and C. L. King, H. F. Ferry and L. D. Hadley, Cross-Appellants

No. 27397

ALICE M. RAMSEY, Appellant and Cross-Appellee,

v.

E. F. ADAMS et al., Appellees, and C. L. KING, H. F. FERRY and L. D. HADLEY, Cross-Appellants

No. 27398

M. R. CHASTAIN, Appellant and Cross-Appellee

v.

E. F. ADAMS et al., Appellees, and C. L. KING, H. F. FERRY and L. D. HADLEY, Cross-Appellants

Appeal from Butler District Court, Allison T. Ayres, Judge. Opinion Filed February 12, 1927. Affirmed in Part and Reversed in Part

John J. Jones, of Chanute, B. R. Leydig and K. M. Geddes, both of El Dorado, for the appellants W. C. James, A. E. Lloyd, Alice M. Ramsey and M. R. Chastain.

C. L. Harris, of El Dorado, Bennett R. Wheeler, S. M. Brewster and John L. Hunt, all of Topeka, for the appellee C. L. Harris, executor of the estate of T. A. Kramer, deceased.

J. B. McKay, of El Dorado, for the appellee E. F. Adams and cross appellants C. L. King and H. F. Ferry; L. J. Bond, of El Dorado, for cross appellant L. D. Hadley.

MEMORANDUM DECISION

HOPKINS, J.:

These cases are similar to and the decisions therein controlled by the decision in Ramsey v. Adams et al., ante p. 675, just decided.

Following the decision in that case, the judgments in favor of C. L. Harris as executor of the estate of T. A. Kramer, deceased, are reversed and the cases remanded, with instructions to render judgment for plaintiffs. Otherwise they are affirmed.

[fols. 461 & 462] Petition for rehearing of defendants King and Perry, covering one page, filed March 3, 1927, omitted from this print. It was denied and nothing more, by order April 16, 1927.

[fols. 463 & 464] Petition for rehearing of defendant C. L. Harris, covering 60 pages, filed March 10, 1927, omitted from this print. It was denied and nothing more by order April 16, 1927.

[fol. 465] IN SUPREME COURT OF KANSAS

No. 27397

ALICE M. RAMSEY, Appellant,

v.

E. F. ADAMS et al., Appellants

ORDER DENYING REHEARING—April 16, 1927

Now comes on for decision the motion for a rehearing of these causes; and thereupon it is ordered that said motion for a rehearing be overruled.

[fols. 466 & 467] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 468 & 468½] IN SUPREME COURT OF KANSAS

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed June 15, 1927

To the Honorable Chief Justice of the Supreme Court of the State of Kansas:

Your petitioner, H. F. Ferry, respectfully shows that on the 16th day of April, A. D. 1927, the Supreme Court of

the State of Kansas, rendered a final judgment and decision against your petitioner in the above entitled cause, affirming the judgment of the District Court of Butler County, Kansas, against your petitioner and in favor of Alice M. Ramsey, appellant and cross-appellee, and remanding said cause to the District Court of Butler County, Kansas, with instructions to carry out the judgment in favor of the said Alice M. Ramsey and against your petitioner, the appeal notwithstanding, all as will more fully appear by reference to the record and proceedings in said cause.

That said Supreme Court of the State of Kansas, is the highest court of the State of Kansas, in which a decision in said suit could be had, and considering himself aggrieved by said final decision of the Supreme Court of the State of Kansas, your petitioner hereby prays the allowance of a writ of error from the said decision and judgment of the Supreme Court of the State of Kansas, to the Supreme Court of the United States, and for a citation and an order fixing the amount of bond.

And your petitioner will ever pray, etc.

L. J. Bond, El Dorado, Kansas, Attorney for Petitioner.

[File endorsement omitted.]

[fols. 469 & 469½] In Supreme Court of Kansas

No. 27397

[Title omitted]

Petition for Writ of Error—Filed June 15, 1927

To the Honorable Chief Justice of the Supreme Court of The State of Kansas:

Your petitioner, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, respectfully shows that on the 16th day of April, A. D., 1927, the supreme court of the State of Kansas, rendered a final judgment and decision against your petitioner in the above en-

titled cause, reversing the judgment of the district court of Butler County, Kansas, in your petitioner's favor, and remanding said cause to said district court of Butler County, Kansas, with instructions to said court to render judgment in favor of said appellant Alice M. Ramsey, and against your petitioner, as will more fully appear by reference to the record and proceedings in said cause.

That said supreme court of the State of Kansas, is the highest court of the State of Kansas, in which a decision in said suit could be had, and considering himself aggrieved by said final judgment and decision, of the supreme court of the State of Kansas, your petitioner prays the allowance of a writ of error from the said decision and judgment of the supreme court of the State of Kansas, to the Supreme Court of the United States, and for a citation and an order fixing the amount of bond.

And your petitioner will ever pray, etc.

C. L. Harris, El Dorado, Kans., Bruce A. Campbell, East St. Louis; Bennett R. Wheeler, S. M. Brewster, John L. Hunt, Topeka, Kans., Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 470] [File endorsement omitted]

IN SUPREME COURT OF KANSAS

No. 27397

[Title omitted]

ASSIGNMENTS OF ERROR—Filed June 15, 1927

Now comes the appellant, H. F. Ferry, and in connection with his petition for a writ of error and as an assignment of errors, says:

That during all the time mentioned in the above entitled cause, he was a citizen of the State of Kansas, and a citizen of the United States of America; that the above entitled cause is one in which the appellee, Alice M. Ramsey, sought

to recover from said appellant, the sum of $7,063.67 with interest, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said appellant while a director of the Butler County State Bank, a banking corporation organized and doing business under the laws of the State of Kansas, and in Butler County, Kansas.

Said appellant says, that in the above entitled cause in the trial court, being the District Court of Butler County, Kansas, and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent, or manager of such banking institution to examine into the affairs of the same and if possible to know its condition. And upon failure of any such person to discharge such duties, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received and [fol. 471] all such debts so contracted; Provided, any director who may have paid more than his share of the liabilities mentioned in this section, may have the proper remedy at law against such other persons as shall not have paid their full share of liabilities."

was drawn in question by said appellant on the ground that said statute in question was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity and constitutionality of said statute.

And in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"In all suits brought for the recovery of the amount of any deposit received or debts so created, all officers, agents, or managers of any such banking institution, charged with having so assented to the reception of such deposit or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposits charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposits or creation of such debts on the part of such officers, agent, or manager, so charged therewith."

was drawn in question by said appellant on the ground of said statute being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

And said appellant respectfully says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Kansas, in the above entitled cause, there is manifest error in this, to wit:

First. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-163 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provision of the Fourteenth Amendment to the Constitution of the United States.

Second. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-164 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fols. 472 & 472½] Third. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, said appellant was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, said appellant was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the said appellant was not deprived of property without due process of law.

Sixth. The Supreme Court of the State of Kansas, erred in holding and deciding what by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, the said appellant was not deprived of property without due process of law.

Seventh. The Supreme Court of the State of Kansas, erred in holding and deciding that by provisions of Section 9-163 of the Revised Statutes of the State of Kansas, the appellant was not denied equal protection of the law.

Eighth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the appellant was not denied equal protection of the law.

For which errors the said appellant H. F. Ferry, prays that said judgment of the Supreme Court of the State of Kansas, be reversed and a judgment be rendered in favor of said appellant and for costs.

T. J. Bond, El Dorado, Kansas, Attorneys for H. F. Ferry.

[fol. 473] [File endorsement omittted]

IN SUPREME COURT OF KANSAS

No. 27397

[Title omitted]

ASSIGNMENTS OF ERROR—Filed June 15, 1927

Now comes the appellee, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, and in connection with his petition for a writ of error and as assignment of errors, says:

That he is now and during all the time mentioned in the above entitled cause, was a citizen of the State of Kansas, and a citizen of the United States of America, as was also during his life time the said T. A. Kramer; that the above entitled cause is one in which the appellant Alice M. Ramsey, sought to recover from said appellee the sum of $7,063.67 with interest, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said appellee's decedent T. A. Kramer, while a director of the Butler County State Bank, a banking corporation organized and doing business under the laws of the State of Kansas, and in Butler County, Kansas.

Said appellee says that in the above entitled cause in the trial court, being the District Court of Butler County, Kansas, and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution, to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution, to examine into the affairs of same, and if possible, to know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such

[fol. 474] bank or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposit so received and all such debts so contracted; Provided, any director who may have paid more than his share of the liabilities mentioned in this section, may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities."

was drawn in question by said appellee on the ground that said statute in question was repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity and constitutionality of said statute.

And in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents or managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith."

was drawn in question by said appellee on the ground of said statute being repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

And said appellee respectfully says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Kansas, in the above entitled cause, there is manifest error in this, to wit:

First. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section

9-163, Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Second. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-164, Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fol. 475] Third. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 Revised Statutes of the State of Kansas, said appellee was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 Revised Statutes of the State of Kansas, said appellee was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163, Revised Statutes of the State of Kansas, the said appellee was not deprived of property without due process of law.

Sixth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 Revised Statutes of the State of Kansas, the said appellee was not deprived of property without due process of law.

Seventh. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, did not deny to said appellee equal protection of the law.

Eighth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-164 Revised Statutes of the State of Kansas, did not deny to said appellee equal protection of the law.

Ninth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, as interpreted by the Supreme Court of the State of Kansas, did

not deny to said appellee equal protection of the law, in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make examination into the affairs of the said Butler County State Bank, during the time in question in said cause.

Tenth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, which provide that if an officer or director of a bank does not examine into the affairs of the bank, he shall be held to have knowledge of the condition of the bank were not in violation of the Fourteenth Amendment to the Constitution of the United States, and did not, as interpreted by said court, deprive appellee of property without due process of law, when the circumstances were that during the time in question it was impossible for said appeallee's decedent T. A. Kramer, a director of said bank to make an examination of said bank.

[fols. 476 & 476½] Eleventh. The Supreme Court of the State of Kansas, erred in holding and deciding, that the provisions of said section 9-163 Revised Statutes of the State of Kansas, which by its terms created a conclusive presumption of knowledge against said appellee's decedent, T. A. Kramer, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

Twelfth. The Supreme Court of the State of Kansas, erred in holding and deciding, that the provisions of said Section 9-164 Revised Statutes of the State of Kansas, which by its terms made the facts that the said banking institution was insolvent or in failing circumstances at the time of the reception of the deposits charged to have been received, prima facie evidence of the assent of said appellee's decedent, T. A. Kramer, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

Thirteenth. The Supreme Court of the State of Kansas, has held and decided herein, that the provisions of said section 9-163 Revised Statutes of the State of Kansas, created a conclusive presumption of knowledge and has held and decided herein that under said provisions said appellee would not be permitted to show any reason or excuse whatsoever, why his decedent, T, A. Kramer, had

not made an examination into the affairs of the said Butler County State Bank, and in so holding and deciding, erred in holding and deciding that said statute as so interpreted was not in violation of the Fourteenth Amendment to the Constitution of the United States.

For which errors the said appellee, C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, prays that said judgment of the Supreme Court of the State of Kansas, be reversed and a judgment be rendered in favor of said appellee and for costs.

—— ——, Attorneys for C. L. Harris, Executor of the last Will and Testament of T. A. Kramer, Deceased.

[fols. 477 & 477½] IN SUPREME COURT OF KANSAS

[Title omitted]

No. 27397

ORDER ALLOWING WRIT OF ERROR—Filed June 15, 1927

The above entitled matter coming on to be heard upon the petition of H. F. Ferry, appellant therein, for writ of error from the Supreme Court of the United States, to the Supreme Court of the State of Kansas, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter—

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[File endorsement omitted.]

[fols. 478 & 478½] IN SUPREME COURT OF KANSAS

[Title omitted]

No. 27397

ORDER ALLOWING WRIT OF ERROR—Filed June 15, 1927

The above entitled matter coming on to be heard upon the petition of C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee therein, for writ of error from the Supreme Court of the United States, to the Supreme Court of the State of Kansas, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter.

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[File endorsement omitted.]

[fols. 479 & 479½] IN SUPREME COURT OF KANSAS

[Title omitted]

No. 27397

ORDER FIXING BOND

Now on this 15th day of June 1927, came on to be heard, the application of H. F. Ferry, appellant, for an order fixing the amount of the bond for costs on appeal to the Supreme Court of the United States, in the above entitled action, and the court being fully informed in the premises, doth fix the amount of said bond for costs at One Thousand Dollars ($1,000.00) conditioned that the said H. F. Ferry, shall pay all costs that may accrue in said action, to the

parties to this action, or to the officers of this court, or to the officers of the Supreme Court of the United States, or any other person, in case he shall be adjudged to pay them; or in case the same cannot be collected from the other parties to this action, if judgment be obtained against them, then that the said H. F. Ferry will pay all such costs.

Said bond to be approved by the Clerk of said court.

W. A. Johnston, Chief Justice

[fols. 480 & 480½] In Supreme Court of Kansas

[Title omitted]

No. 27397

Order Fixing Bond

Now on this 15th day of June, 1927, came on to be heard, the application of C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, for an order fixing the amount of the bond for costs on appeal to the Supreme Court of the United States in the above entitled action, and the court being fully informed in the premises, doth fix the amount of said bond for costs at One Thousand Dollars ($1,000.00) conditioned that the said C. L. Harris, as such executor shall pay all costs that may accrue in said action, to the parties to this action, or to the officers of this court or to the officers of the Supreme Court of the United States or any other persons, in case he shall be adjudged to pay them; or in case the same cannot be collected from the other parties to this action, if judgment be obtained against them, then that the said C. L. Harris, as such executor, will pay all such costs.

Said bond to be approved by the Clerk of said court.

W. A. Johnston, Chief Justice.

[fols. 481 & 481½] IN SUPREME COURT OF KANSAS

WRIT OF ERROR—Filed June 15, 1927

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record, proceedings and judgment in a cause lately pending in the Supreme Court of the State of Kansas, being the highest court of the said State, in which a decision in the cause could be had, between Alice M. Ramsay, appellant and cross-appellee, vs. E. F. Adams, appellee, and C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee and C. L. King, H. F. Ferry and L. D. Hadley, cross-appellants, wherein was drawn in question the validity of certain statutes of the said State of Kansas, on the ground of their being repugnant to the Constitution of the United States of America, and particularly to the Fourteenth Amendment to said Constitution, and the decision was in favor of such, their validity; it appears that the said H. F. Ferry, appellant, is entitled to have the said judgment reviewed by the Supreme Court of the United States, and he having presented a petition for a writ of error, and assignments of error to that end;

And we being willing that error, if any hath occurred, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you that under your seal, distinctly and openly, you send the record, proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof, so that the said Supreme Court of the United States may examine and consider the same and may cause further to be done to correct the error therein, if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this 15th day of June, in the year of our Lord one thousand nine hundred and twenty-seven.

F. L. Campbell, Clerk of the U. S. Dist. Court. (Seal of District Court U. S., District of Kansas.)

Allowed by W. A. Johnston, Chief Justice.

[File endorsement omitted.]

[fols. 482 & 482½] In Supreme Court of Kansas

Writ of Error—Filed June 15, 1927

The United States of America, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record, proceedings and judgment in a cause lately pending in the Supreme Court of the State of Kansas, being the highest court of the said State, in which a decision in the cause could be had between Alice M. Ramsey, appellant and cross-appellee, vs. E. F. Adams, appellee and C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, and C. L. King, H. F. Ferry and L. D. Hadley, cross-appellants, wherein was drawn in question the validity of certain statutes of the said State of Kansas, on the ground of their being repugnant to the Constitution of the United States of America, and particularly to the Fourteenth Amendment to said Constitution, and the decision was in favor of such, their validity; it appears that the said C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, is entitled to have the said judgment reviewed by the Supreme Court of the United States, and he having presented a petition for a writ of error, and assignments of error to that end;

And we being willing that error, if any hath occurred, should be duly corrected and full and speedy justice done,

to the parties aforesaid, in this behalf, do command you that under your seal, distinctly and openly, you send the record, proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof, so that the said Supreme Court of the United States may examine and consider the same and may cause further to be done to correct the error therein if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the 15th day of June, in the year of our Lord one thousand nine hundred and twenty-seven.

F. L. Campbell, Clerk of the U. S. Dist. Court. (Seal of District Court U. S., District of Kansas.)

Allowed by W. A. Johnston, Chief Justice.

[File endorsement omitted.]

[fols. 483-484½] Bonds on writs of error, for $1,000.00 each, approved and filed June 15, 1927, omitted in printing.

[fols. 485-488½] Citations, in usual form, showing service on John J. Jones et al., filed June 21, 1927, omitted in printing.

[fol. 489] Certificate of lodgment omitted in printing.

[fol. 490] Return to writ of error omitted in printing.

[fols. 491-500] Motions for and orders enlarging time to docket cases in U. S. Supreme Court omitted in printing.

[fol. 501] IN SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1927

No. 407

STATEMENTS OF POINTS ON WHICH PLAINTIFF IN ERROR INTENDS TO RELY—Filed August 4, 1927

I

The plaintiff in error, H. F. Ferry, contends that the above entitled cause is one in which the defendant in error, Alice M. Ramsey, a depositor in the Butler County State Bank, of Butler County, Kansas, sought to recover from said plaintiff in error a sum of money, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said plaintiff in error, while a director of said Butler County State Bank.

II

The plaintiff in error contends that in the above entitled cause, in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"It shall be unlawful for any president, director, manager, cashier, or any other officer of any banking institution to assent to the reception of any deposits or the creation of debts by such banking institution after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and if possible know its condition. And upon the failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted: Provided, any director who

may have paid more than his share of the liabilities men-
[fol. 502] tioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of said liabilities."

was drawn in question by said plaintiff in error on the ground that said statute was repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute, and that in the trial Court and the Supreme Court of the State of Kansas, the validity of Section 9-164, of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"In all the suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents and managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge on the part of such officer, agent or manager so charged therewith."

was drawn in question by the plaintiff in error on the ground that the statute was repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

III

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163, of the Revised Statutes of the State of Kansas, for the year 1923, were valid, and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-163, of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of

privileges and immunities secured to other citizens of the United States, and was not denied the equal protection of the law.

IV

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, were valid and [fol. 503] were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the Unted States, and in holding and deciding that by the provisions of said section 9-164 of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

V

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163, of the Revised Statutes of the State of Kansas for the year 1923, which by its terms created a conclusive presumption of knowledge against said plaintiff in error, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VI

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent, or in failing circumstances at the time of the reception of the deposit charged to have been received, prima facie evidence of the assent of the plaintiff in error, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VII

Plaintiff in error contends that the evidence in said cause fails to show that he knew the said Butler County State Bank was insolvent at the time in question, and fails to show that said Butler County State Bank was insolvent at the time in question, and that the evidence in this cause fails to show that the plaintiff in error assented to the reception of the deposits in question.

VIII

Said plaintiff in error further states that he thinks it necessary for the consideration of the above points that all of the record be printed.

[fol. 504] L. J. Bond, J. B. McKay, Attorneys for Plaintiff in Error.

Received a copy of the above statement the 29 day of July, 1927.

C. L. Harris, as Executor of the Estate of T. A. Kramer, Deceased, L. D. Hadley, C. L. King, Defendants in Error. John J. Jones, B. A. Leydig, Attorneys for Alice M. Ramsey, Defendant in Error.

[fol. 505] [Endorsed:] No. 407. 32,859. In the Supreme Court of the United States, October Term, 1927. H. F. Ferry, Plaintiff in Error, v. Alice M. Ramsey, C. L. King and L. D. Hadley, Defendants in Error. Statements of points on which plaintiff in error intends to rely. L. J. Bond and J. B. McKay, Attorney-at-law, Masonic Building, El Dorado, Kansas, Attorneys for Plaintiff in Error.

[fol. 506] [File endorsement omitted.]

[fol. 507] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1927

No. 408

STATEMENT OF POINTS ON WHICH PLAINTIFF IN ERROR INTENDS TO RELY—Filed July 29, 1927

I

The plaintiff in error, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, contends that the above-entitled cause is one in which the defendant in error, Alice M. Ramsey, a depositor in the Butler County State Bank, of Butler County, Kansas, sought to recover from said plaintiff in error a sum of money, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said plaintiff in error's decedent, T. A. Kramer, while a director of said Butler County State Bank.

II

The plaintiff in error contends that in the above-entitled cause, in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas of the year 1923, to-wit:

"It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, [fol. 508] agent, or manager of such banking institution to examine into the affairs of the same, and if possible know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such

debts so contracted; Provided: any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of said liabilities."

was drawn in question by the said plaintiff in error on the ground of said statutes being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute, and that in the trial court and in the Supreme Court of the State of Kansas, the validity of section 9-164 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"In all suits brought for the recovery of the amount of any deposits received or debt so created all officers, agents, or managers of any such banking institution, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit so charged to have been received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent, or manager so charged therewith."

was drawn in question by said plaintiff in error on the ground of said statutes being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

III

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said section 9-163, of the Revised Statutes of the State of Kansas, for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the

[fol. 509] United States. And in holding and deciding that by the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

IV

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

V

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163 of the Revised Statutes of the state of Kansas, as interpreted by said Court did not deny to said plaintiff in error the equal protection of the law in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make an examination into the affairs of the said Butler County State Bank during the time in question in said cause; and that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, which provides that if an officer or director of a bank does not examine into the affairs of the bank, he shall be held to have had knowledge of the condition of the bank, were not [fol. 510] in violation of the Fourteenth Amendment to the

Constitution of the United States, and did not, as interpreted by the Supreme Court of the State of Kansas, deprive said plaintiff in error of property without due process of law, when the circumstances were that, during the time in question, it was impossible for plaintiff in error's decedent, T. A. Kramer, a director of said bank, to make an examination of said bank.

VI

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the state of Kansas for the year 1923, which by its terms created a conclusive presumption of knowledge against said plaintiff in error's decedent, T. A. Kramer, were not in violation of the Fourteenth Amendment of the Constitution of the United States.

VII

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent, or in failing circumstances, at the time of the reception of the deposit so charged to have been received prima facie evidence of the assent of the said plaintiff in error's decedent, T. A. Kramer, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VIII

Plaintiff in error contends that the Supreme Court of the State of Kansas, has erred in deciding in this cause that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas, created a conclusive presumption of knowledge, and has erred in deciding in this cause that [fol. 511] under said provisions said plaintiff in error would not be permitted to show any reason or excuse whatsoever why his decedent, T. A. Kramer, had not made an examination into the affairs of the said Butler County State

Bank, and in so holding and deciding erred in holding and deciding that said statute as so interpreted was not in violation of the Fourteenth Amendment to the Constitution of the United States.

IX

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the fact that the plaintiff in error's decedent, T. A. Kramer, was mentally and physically incapable of examining into the affairs of the said Butler County State Bank during all the time in question in this cause would not relieve said decedent from the duty of examining into the affairs of said bank during said time.

X

Plaintiff in error contends that the evidence in said cause fails to show that his decedent, T. A. Kramer, knew the said Butler County State Bank was insolvent at the time in question, and fails to show that said Butler County State Bank was insolvent at the time in question, and that the evidence in this cause fails to show that *that* the plaintiff in error's decedent, T. A. Kramer, assented to the reception of the deposits in question, and that the evidence in this cause shows that during all the time in question plaintiff in error's decedent, T. A. Kramer, was mentally and physically unable to assent to the reception of said deposits or to examine into the affairs of said bank, without any fault on the part of the decedent.

[fols. 512-520] XI

Said plaintiff in error further states that he thinks it necessary, for the consideration of the above points, that all of the record in this case be printed.

John L. Hunt, Bruce A. Campbell, Attorneys for Plaintiff in Error.

Dated at Topeka, Kansas, this 25th day of July, 1927.

Received a copy of the above statement this 26 day of July, 1927.

J. B. McKay, L. J. Bond, Attorneys for C. L. King and H. F. Ferry, Defendants in Error. L. D. Hadley, Defendant in Error.

[fols. 521-523] [File endorsement omitted.]

[fol. 524] IN SUPREME COURT OF THE UNITED STATES

Nos. 407-418

MOTION TO CONSOLIDATE AND TO ELIMINATE UNNECESSARY PRINTING AND ORDER THEREON

Now come the Plaintiffs in Error in each of the above entitled causes, by Rush L. Holland and George E. Strong, their attorneys, and pray the Court that the above causes [fol. 525] be consolidated for hearing and that there be printed the whole record in cases No-. 407 and 408 and only so much of the record in the remaining cases, numbered 409 to 418, inclusive, as is not identical with that in cases No-. 407 and 408, for the following reasons:

1. Excluding matters of pleading, identification of interested parties, and extent and amount of their interest, the evidence is identical in all of the above cases, as the trial Court heard evidence in but one case, and a transcript thereof was used in all of the other cases. Furthermore, the abstracts of evidence submitted to the Supreme Court of the State of Kansas were identical, with the exceptions mentioned above.

2. The Supreme Court of the State of Kansas consolidated the above entitled causes for hearing.

3. The cost of printing the entire record in each cause is burdensome and obviously unnecessary and wasteful.

4. Counsel for Defendants in Error have definitely refused to agree to any arrangement whereby the costs of printing the record in these causes could be reduced and

unnecessary duplication avoided; hence the necessity of appealing to this Honorable Court for relief.

Respectfully submitted.

Rush L. Holland, George E. Strong, Attorneys for Plaintiffs in Error.

[fol. 526] Note

(The foregoing motion was filed on October 6, 1927, and orally presented to the Court on October 10, 1927. Whereupon one of the Justices suggested that a præcipe be filed setting forth the portions of the record which Plaintiffs in Error desire to have printed in each of said causes, which is submitted herewith.)

In the Supreme Court of the United States, October Term, 1927

Nos. 407, 409, 411, 413, 415, 417

H. F. Ferry, Plaintiff in Error,

vs.

Alice M. Ramsey et al., Defendants in Error

Nos. 408, 410, 412, 414, 416, 418

C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, Deceased, Plaintiff in Error,

vs.

Alice M. Ramsey et al., Defendants in Error

Præcipe

To the Clerk of the Supreme Court of the United States:

You will please disregard any and all instructions to print heretofore made, and cause to be printed the entire record in said causes No. 407 and No. 408, and in each of the said causes numbered 409 to 418, inclusive, the entire [fol. 527] record except the abstract of record filed September 9, 1926, in the Supreme Court of the State of Kansas,

the written opinion with syllabus, and the memorandum opinion attached thereto as filed on February 12, 1927. The said excepted portions are identical with the same portions of the record in said causes No. 407 and No. 408.

Respectfully submitted.

Rush L. Holland, George E. Strong, Attorneys for Plaintiffs in Error in Each of Said Causes.

[fol. 528] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1927

Nos. 407 to 418

On consideration of a motion of counsel for the plaintiffs in error in these cases to consolidate them all for hearing, with directions to print the whole record in two of the cases and only so much of the record in the remaining cases as is necessary to show the difference between the cases,

It is now here ordered that the said motion be, and the same is hereby, granted, the ultimate cost of printing, of course, to await the event, and the effect of any omission to print, to be at the risk of the plaintiffs in error moving for the consolidation and hte limitation of printing.

October 31, 1927.

Endorsed on cover: File Nos. 32,859, 32,860. Term No. 407. H. F. Ferry, plaintiff in error, vs. Alice M. Ramsey, C. L. King, and L. D. Hadley. Term No. 408. C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, plaintiff in error, vs. Alice M. Ramsey, C. L. King, H. F. Ferry et al. Filed July 28th, 1927. File Nos. 32,859, 32,860.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 409

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

W. O. JAMES, C. L. KING, AND L. D. HADLEY

No. 410

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

vs.

W. O. JAMES, C. L. KING, H. F. FERRY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

FILED JULY 30, 1927

(32,861, 32,862)

(32,861, 32,862)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 409

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

W. O. JAMES, C. L. KING, AND L. D. HADLEY

No. 410

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

vs.

W. O. JAMES, C. L. KING, H. F. FERRY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

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[fols. a-c] [Caption omitted]

[fols. d-438] Minute entry of argument and submission November 5, 1926, omitted in printing.

[fols. 439 & 440] [Caption omitted]

IN THE SUPREME COURT OF KANSAS

[fols. 441-461]

No. 27395

W. O. James, Appellant,

v.

E. F. Adams et al., Appellees

Judgment—February 12, 1927

These causes come on for decision and thereupon it is ordered and adjudged that judgment in favor of T. L. Harris as executor of the estate of T. A. Kramer deceased, be reversed and remanded with instructions to render judgment for the plaintiff, and in other respects the judgment is affirmed. It is further ordered that the defendants pay the costs of this case in this court taxed at $— and hereof let execution issue.

[fols. 462 & 463] Petition for rehearing of King and Ferry, covering 1 page, filed April 3, 1927, omitted in this print, It was denied and nothing more by order April 16, 1927.

[fols. 464 & 465] Petition for rehearing of C. L. Harris, covering 60 pages, filed March 10, 1927, omitted from this print. It was denied and nothing more by order April 16, 1927.

[fol. 466] IN SUPREME COURT OF KANSAS

No. 27395

[Title omitted]

ORDER DENYING REHEARING—April 16, 1927

Now comes on for decision the motion for a rehearing of these causes; and thereupon it is ordered that said motion for a rehearing be overruled.

[fols. 467 & 468] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 469 & 469½] IN SUPREME COURT OF KANSAS

No. 27395

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed June 15, 1927

To the Honorable Chief Justice of the Supreme Court of the State of Kansas:

Your petitioner, H. F. Ferry, respectfully shows that on the 16th day of April A. D. 1927, the Supreme Court of the State of Kansas, rendered a final judgment and decision against your petitioner in the above entitled cause, affirming the judgment of the District Court of Butler County, Kansas, against your petitioner, and in favor of W. O. James, appellant and cross-appellee, and remanding said cause to the District Court of Butler County, Kansas, with instructions to carry out the judgment in favor of the said W. O. James and against your petitioner, the appeal notwithstanding, all as will more fully appear by reference to the record and proceedings in said cause.

That said Supreme Court of the State of Kansas, is the highest court of the State of Kansas, in which a decision in said suit could be had, and considering himself aggrieved

by said final decision of the Supreme Court of the State of Kansas, your petitioner hereby prays the allowance of a writ of error from the said decision and judgment of the Supreme Court of the State of Kansas, to the Supreme Court of the United States, and for a citation and an order fixing the amount of bond.

And your petitioner will ever pray, etc.

L. J. Bond, Eldorado, Kansas, Attorneys for Petitioner.

[File endorsement omitted.]

[fols. 470 & 470½] In Supreme Court of Kansas

No. 27395

[Title omitted]

Petition for Writ of Error—Filed June 15, 1927

To the Honorable Chief Justice of the Supreme Court of the State of Kansas:

Your petitioner, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, respectfully shows that on the 16th day of April A. D., 1927, the Supreme Court of the State of Kansas, rendered a final judgment and decision against your petitioner in the above entitled cause, reversing the judgment of the district court of Butler County, Kansas, in your petitioner's favor, and remanding said cause to said district court of Butler County, Kansas, with instructions to said court to render judgment in favor of said appellant W. O. James and against your petitioner as will more fully appear by reference to the record and proceedings in said cause.

That said Supreme Court of the State of Kansas, is the highest court of the State of Kansas, in which a decision in said suit could be had, and considering himself aggrieved by said final judgment and decision of the Supreme Court of the State of Kansas, your petitioner hereby prays the allowance of a writ of error from the said decision and judgment

of the Supreme Court of the State of Kansas, to the Supreme Court of the United States, and for a citation and an order fixing the amount of bond.

And your petitioner will ever pray, etc.

C. L. Harris, Eldorado, Kans.; Bruce A. Campbell, East St. Louis; Bennett R. Wheeler, S. M. Brewster, John L. Hunt, Topeka, Kans., Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 471] [File endorsement omitted]

IN SUPREME COURT OF KANSAS

No. 27395

[Title omitted]

ASSIGNMENTS OF ERROR—Filed June 15, 1927

Now comes the appellant, H. F. Ferry, and in connection with his petition for a writ of error and as an assignment of errors, says:

That during all the time mentioned in the above entitled cause, he was a citizen of the State of Kansas, and a citizen of the United States of America; that the above entitled cause is one in which the appellee, W. O. James, sought to recover from said appellant, the sum of $7,819.72 with interest, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said appellant while a director of said Butler County State Bank, a banking corporation organized and doing business under the laws of the State of Kansas, and in Butler County, Kansas.

Said appellant says, that in the above entitled cause in the trial court, being the District Court of Butler County, Kansas, and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"It shall be unlawful for any president, director, manager, cashier or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent, or manager of such banking institution to examine into the affairs of the same and is possible, to know its condition. And upon failure of any such person to discharge such duties, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received and all such debts [fol. 472] so contracted: Provided, any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of liabilities."

was drawn in question by said appellant on the ground that said statute in question was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity and constitutionality of said statute.

And in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"In all suits brought for the recovery of the amount of any deposit received or debts so created, all officers, agents or managers of any such banking institution, charged with having so assented to the reception of such deposit or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposits charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposits or creation of such debts on the part of such officers, agent or manager so charged therewith."

was drawn in question by said appellant on the ground of said statute being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

And said appellant respectfully says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Kansas, in the above entitled cause, there is manifest error in this, to wit:

First. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-163 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Second. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-164 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fols. 473 & 473½] Third. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, said appellant was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, said appellant was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the said appellant was not deprived of property without due process of law.

Sixth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section

9-163 of the Revised Statutes of the State of Kansas, the said appellant was not deprived of property without due process of law.

Seventh. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, the appellant was not denied equal protection of the law.

Eighth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the appellant was not denied equal protection of the law.

For which errors the said appellant H. F. Ferry, prays that said judgment of the Supreme Court of the State of Kansas, be reversed and a judgment be rendered in favor of said appellant and for costs.

L. J. Bond, Eldorado, Kansas, Attorneys for H. F. Ferry.

[fol. 474] [File endorsement omitted]

IN SUPREME COURT OF KANSAS

No. 27395

[Title omitted]

ASSIGNMENTS OF ERROR—Filed June 15, 1927

Now comes the appellee, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, and in connection with his petition for a writ of error and as assignment of errors, says:

That he is now and during all the time mentined in the above entitled cause, was a citizen of the State of Kansas, and a citizen of the United States of America, that the above entitled cause is one in which the appellant W. O. James, sought to recover from said appellee the sum of $7,819.72 with interest under the provisions of certain

statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said appellee's decedent T. A. Kramer while a director of the Butler County State Bank, a banking corporation organized and doing business under the laws of the State of Kansas, and in Butler County, Kansas.

Said appellee says that in the above entitled cause in the trial court, being the District Court of Butler County, Kansas, and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution, to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution, to examine into the affairs of same, and if possible, to know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act be held to have had knowledge of the insolvency of such bank [fol. 475] or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposit so received and all such debts so contracted; provided, any director who may have paid more than his share of the liabilities mentioned in this section, may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities."

was drawn in question by said appellee on the ground that said statute in question was repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity and constitutionality of said statute.

And in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents

or managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent, or manager so charged therewith."

was drawn in question by said appellee on the ground of said statute being repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

And said appellee respectfully says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Kansas, in the above entitled cause, there is manifest error in this, to wit:

First. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-163 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Second. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-164, Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fol. 476] Third. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163, Revised Statutes of the State of Kansas, said appellee was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 Revised Statutes of the State of Kansas, said

appellee was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 Revised Statutes of the State of Kansas, the said appellee was not deprived of property without due process of law.

Sixth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 Revised Statutes of the State of Kansas, the said appellee was not deprived of property without due process of law.

Seventh. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, did not deny to said appellee equal protection of the law.

Eighth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-164 Revised Statutes of the State of Kansas, did not deny to said appellee equal protection of the law.

Ninth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, as interpreted by the Supreme Court of the State of Kansas, did not deny to said appellee equal protection of the law, in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make examination into the affairs of the said Butler County State Bank, during the time in question in said cause.

Tenth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, which provide that if an officer or director of a bank does not examine into the affairs of the bank, he shall be held to have had knowledge of the condition of the bank were not in violation of the Fourteenth Amendment to the Constitution of the United States, and did not, as interpreted by said court, deprive said appellee of property without due process of law, when the circumstances were that during the time in question it was impossible for said appellee's

decedent, T. A. Kramer, a director of said bank to make an examination of said bank.

[fols. 477 & 477½] Eleventh. The Supreme Court of the State of Kansas, erred in holding and deciding, that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, which by its terms created a conclusive presumption of knowledge against said appellee's decedent, T. A. Kramer, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

Twelfth. The Supreme Court of the State of Kansas, erred in holding and deciding, that the provisions of said Section 9-164 Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent or in failing circumstances at the time of the reception of the deposits charged to have been received, prima facie evidence of the assent of said appellee's decedent, T. A. Kramer, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

Thirteenth. The Supreme Court of the State of Kansas, has held and decided herein, that the provisions of said section 9-163 Revised Statutes of the State of Kansas, created a conclusive presumption of knowledge and has held and decided herein that under said provisions said appellee would not be permitted to show any reason or excuse whatsoever, why his decedent, T. A. Kramer, had not made an examination into the affairs of the said Butler County State Bank, and in so holding and deciding, erred in holding and deciding that said statute as so interpreted was not in violation of the Fourteenth Amendment to the Constitution of the United States.

For which errors the said appellee, C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, prays that said judgment of the Supreme Court of the State of Kansas, be reversed and a judgment be rendered in favor of said appellee and for costs.

Bruce A. Campbell, East St. Louis; C. L. Harris, El Dorado, Kan.; Bennett B. Wheeler, S. M. Brewster, John L. Hunt, Attorneys for C. L. Harris, Executor of the Last Will and Testament of T. A. Kramer, Deceased.

[fols. 478 & 478½] IN SUPREME COURT OF KANSAS

No. 27395

[Title omitted]

ORDER ALLOWING WRIT OF ERROR—Filed June 15, 1927

The above entitled matter coming on to be heard upon the petition of H. F. Ferry, appellant therein, for writ of error from the Supreme Court of the United States, to the Supreme Court of the State of Kansas, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented presented by the record in said matter,

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[File endorsement omitted.]

[fols. 479 & 479½] IN SUPREME COURT OF KANSAS

No. 27395

[Title omitted]

ORDER ALLOWING WRIT OF ERROR—Filed June 15, 1927

The above entitled matter coming on to be heard, upon the petition of C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee therein, for writ of error from the Supreme Court of the United States, to the Supreme Court of the State of Kansas, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter.

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[File endorsement omitted.]

[fols. 480 & 480½] In Supreme Court of Kansas

No. 27395

[Title omitted]

Order Fixing Bond

Now on this 15th day of June 1927, came on to be heard the application of H. F. Ferry, appellant, for an order fixing the amount of the bond for costs on appeal to the Supreme Court of the United States, in the above entitled action, and the court being fully informed in the premises, doth fix the amount of said bond for costs at One Thousand Dollars ($1,000.00) conditioned that the said H. F. Ferry, shall pay all costs that may accrue in said action, to the parties to this action, or to the officers of this court, or to the officers of the Supreme Court of the United States or any other person, in case he shall be adjudged to pay them; or in case the same cannot be collected from the other parties to this action, if judgment be obtained against them, then that the said H. F. Ferry will pay all such costs.

Said bond to be approved by the Clerk of said court.

W. A. Johnston, Chief Justice.

[fols. 481 & 481½] In Supreme Court of Kansas

No. 27395

[Title omitted]

Order Fixing Bond

Now on this 15th day of June 1927, came on to be heard the application of C. L. Harris, as executor of the last

will and testament of T. A. Kramer, deceased, appellee, for an order fixing the amount of the bond for costs on appeal to the Supreme Court of the United States in the above entitled action, and the court being fully informed in the premises, doth fix the amount of said bond for costs at One Thousand Dollars ($1,000.00), conditioned that the said C. L. Harris, as such executor, shall pay all costs that may accrue in said action, to the parties to this action, or to the officers of this court or to the officers of the Supreme Court of the United States or any other persons, in case he shall be adjudged to pay them; or in case the same cannot be collected from the other parties to this action, if judgment be obtained against them, then that the said C. L. Harris, as such executor, will pay all such costs.

Said bond to be approved by Clerk of said court.

W. A. Johnston, Chief Justice.

[fols. 482 & 482½] In Supreme Court of Kansas

Writ of Error—Filed June 15, 1927

The United States of America, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record, proceedings and judgment in a cause lately pending in the Supreme Court of the State of Kansas, being the highest court of the said State, in which a decision in the cause could be had, between W. O. James, appellant and cross-appellee, vs. E. F. Adams and C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, and C. L. King, H. F. Ferry and L. D. Hadley, cross-appellants, wherein was drawn in question the validity of certain statutes of the said State of Kansas, on the ground of their being repugnant to the Constitution of the United States of America, and particularly to the Fourteenth Amendment to said Constitution, and the decision was in favor of such, their validity; it appears that the said H. F. Ferry, appellant, is entitled to have the said judgment reviewed by the Supreme Court of

the United States, and he having presented a petition for a writ of error, and assignments of error to that end:

And we being willing that error, if any hath occurred, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you that under your seal, distinctly and openly, you send the record, proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof, so that the said Supreme Court of the United States may examine and consider the same and may cause further to be done to correct the error therein if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the 15th day of June, in the year of our Lord one thousand nine hundred and twenty-seven.

F. L. Campbell, Clerk of the U. S. District Court.
(Seal of District Court U. S., District of Kansas.)

Allowed by W. A. Johnston, Chief Justice.

[File endorsement omitted.]

[fols. 483 & 483½] In Supreme Court of Kansas

Writ of Error—Filed June 15, 1927

The United States of America, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record, proceedings and judgment in a cause lately pending in the Supreme Court of the State of Kansas, being the highest court of the said State, in which a decision in the cause could be had, between W. O. James, appellant and cross-appellee, and E. F. Adams, and C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, and C. L. King, H. F. Ferry

and L. D. Hadley, cross-appellants, wherein was drawn in question the validity of certain statutes of the said State of Kansas, on the ground of their being repugnant to the Constitution of the United States of America, and particularly to the Fourteenth Amendment to said Constitution, and the decision was in favor of such, their validity; it appears that the said C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, is entitled to have the said judgment reviewed by the Supreme Court of the United States, and he having presented a petition for a writ of error, and assignments of error to that end;

And we being willing that error, if any hath occurred, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you that under your seal, distinctly and openly, you send the record, proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof, so that the said Supreme Court of the United States may examine and consider the same and may cause further to be done to correct the error therein, if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the 15th day of June in the year of our Lord one thousand nine hundred and twenty-seven.

F. L. Campbell, Clerk of the U. S. District Court.

(Seal of District Court U. S., District of Kansas.)

Allowed by W. A. Johnston, Chief Justice.

[fols. 484-485½] Bond on writs of error for $1,000.00, approved and filed June 15, 1927, omitted in printing.

[fol. 486-489½] Citation, in usual form, showing service on John J. Jones et al., filed June 21, 1927, omitted in printing.

[fol. 490] Certificate of lodgment omitted in printing.

[fol. 491] Return to writ of error omitted in printing.

[fols. 492-498] Motions for and order enlarging time to docket cause in U. S. Supreme Court omitted in printing.

[fol. 499] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1927

No. 409

STATEMENT OF POINTS ON WHICH PLAINTIFF IN ERROR INTENDS TO RELY—Filed August 4, 1927

I

The plaintiff in error, H. F. Ferry, contends that the above entitled cause is one in which the defendant in error, W. O. James, a depositor in the Butler County State Bank, of Butler County, Kansas, sought to recover from said plaintiff in error a sum of money, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said plaintiff in error, while a director of said Butler County State Bank.

II

The plaintiff in error contends that in the above entitled cause, in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"It shall be unlawful for any president, director, manager, cashier, or any other officer of any banking institution to assent to the reception of any deposits or the creation of debts by such banking institution after he shall have

had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and if possible know its condition. And upon the failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted; Provided, any director who may have paid more than his share of the liabilities men- [fol. 500] tioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of said liabilities"

was drawn in question by said plaintiff in error on the ground that said statute was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute, and that in the trial court and the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"In all the suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents and managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge on the part of such officer, agent or manager so charged therewith"

was drawn in question by the plaintiff in error on the ground that the statute was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

III

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, were valid, and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-163, of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not denied the equal protection of the law.

IV

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164, of the Revised Statutes of the State of Kansas, for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said section 9-164 of the Revised Statutes of the [fol. 501] State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

V

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, which by its terms created a conclusive presumption of knowledge against said plaintiff in error, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VI

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that

the provisions of said Section 9-164 of the Revised Satutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent, or in failing circumstances at the time of the reception of the deposit charged to have been received prima facie evidence of the assent of the plaintiff in error, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VII

Plaintiff in error contends that the evidence in said cause fails to show that he knew the said Butler County State Bank was insolvent at the time in question, and fails to show that said Butler County State Bank was insolvent at the time in question, and that the evidence in this cause fails to show that the plaintiff in error assented to the reception of the deposits in question.

VIII

Said plaintiff in error further states that he thinks it necessary for the consideration of the above points that all of the record be printed.

L. J. Bond, J. B. McKay, Attorneys for Plaintiff in Error.

[fols. 502 & 503] Received a copy of the above statement the 29 day of July, 1927.

C. L. Harris, as Executor of the Estate of T. A. Kramer, Deceased; L. D. Hadley, L. C. King, Defendants in Error. John J. Jones, B. R. Leydig, Attorneys for W. O. James, Defendant in Error.

[fol. 504] [File endorsement omitted.]

[fol. 505] IN SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1927

No. 410

STATEMENT OF POINTS ON WHICH PLAINTIFF IN ERROR INTENDS TO RELY—Filed July 29, 1927

I

The plaintiff in error, C. L. Harris, as executor, of the last will and testament of T. A. Kramer, deceased, contends that the above entitled cause is one in which the defendant in error, W. O. James, a depositor in the Butler County State Bank, of Butler County, Kansas, sought to recover from said plaintiff in error a sum of money, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said plaintiff in error's decedent, T. A. Kramer, while a director of said Butler County State Bank.

II

The plaintiff in error contends that in the above entitled cause, in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowl-[fol. 506] edge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of such officer, agent or manager of such banking institution to examine into the affairs of the same, and if possible know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this act shall be individually responsible for such deposits so received, and all such debts so

contracted: Provided, Any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of said liabilities."

was drawn in question by said plaintiff in error on the ground of said statute's being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute, and that in the trial court and the Supreme Court of the State of Kansas, the validity of Section 9-164, of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents and managers of any such banking institution, charged with having so assented to the reception of such deposit; or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith."

was drawn in question by said plaintiff in error on the ground of said statute's being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute.

[fol. 507]

III

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the

provisions of said Section 9-163 of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

IV

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, said plaintiff was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law; and was not denied the equal protection of the law.

V

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of Kansas, as interpreted by said Court, did not deny to [fol. 508] said plaintiff in error the equal protection of the law in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make an examination into the affairs of said Butler County State Bank during the time in question in said cause; and that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, which provide that if an officer or a director of a bank does not examine into the affairs of the bank, he shall be held to have had knowledge of the condition of the bank, were not in violation of the Fourteenth Amendment to the Constitution of the United States, and did not, as interpreted by the Supreme Court of the State of Kansas, deprive said plaintiff in error of property without due process of law,

when the circumstances were that, during the time in question, it was impossible for plaintiff in error's decedent, T. A. Kramer, a director in said bank, to make an examination of said bank.

VI

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163 of the Revised Statutes of the State of Kansas for 1923, which by its terms created a conclusive presumption of knowledge against said plaintiff in error's decedent, T. A. Kramer, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VII

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said section 9-164 of the Revised Statutes of the State of Kansas for the year 1923, which by its terms made the fact that the said banking institution was insol-
[fol. 509] vent, or in failing circumstances, at the time of the reception of the deposit charged to have been received prima facie evidence of the assent of the said plaintiff in error's decedent, T. A. Kramer, to such deposit, were not in violation of the Fourteenth Amendment to the constitution of the United States.

VIII

Plaintiff in error contends that the Supreme Court of the State of Kansas, has erred in deciding that in this cause the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas created a conclusive presumption of knowledge, and has erred in deciding in this cause that under said provisions said plaintiff in error would not be permitted to show any reason or excuse whatsoever why his decedent, T. A. Kramer, had not made an examination into the affairs of the said Butler County State Bank, and in so holding and deciding erred in holding and deciding that said statute as so interpreted was not in violation of the Fourteenth Amendment to the Constitution of the United States.

IX

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the fact that the plaintiff in error's decedent, T. A. Kramer, was mentally and physically incapable of examining into the affairs of the said Butler County State Bank during all the time in question in this cause would not relieve said decedent from the duty of examining into the affairs of said bank during said time.

X

Plaintiff in error contends that the evidence in said cause fails to show that his decedent, T. A. Kramer, knew the said Butler County State Bank was insolvent at the time in question, and fails to show that said Butler County State Bank was insolvent at the time in question, and that the [fols. 510-518] evidence in this cause fails to show that the plaintiff in error's decedent, T. A. Kramer, assented to the reception of the deposits in question, and that the evidence in this cause shows that during all the time in question plaintiff in error's decedent, T. A. Kramer, was mentally and physically unable to assent to the reception of said deposits or to examine into the affairs of said bank, without any fault on the part of said decedent.

XI

Said plaintiff in error further states that he thinks it necessary for the consideration of the above points, that all the record in this case be printed.

John L. Hunt, Bruce A. Campbell, Attorneys for Plaintiff in Error.

Received a copy of the above statement this 26th day of July, 1927.

J. B. McKay, L. J. Bond, Attorney- for C. H. King and H. F. Ferry, Defendants in Error. L. D. Hadley, Defendant in Error.

[fol. 519] [File endorsement omitted.]

[fol. 520] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1927

Nos. 407 to 418

ORDER GRANTING MOTION TO CONSOLIDATE AND AS TO PRINTING

On consideration of a motion of counsel for the plaintiffs in error in these cases to consolidate them all for hearing, with directions to print the whole record in two of the cases and only so much of the record in the remaining cases as is necessary to show the difference between the cases.

It is now here ordered that the said motion be, and the same is hereby, granted, the ultimate cost of printing, of course, to await the event, and the effect of any omission to print, to be at the risk of the plaintiffs in error moving for the consolidation and the limitation of printing.

October 31, 1927.

Endorsed on cover: File Nos. 32,861 and 32,862. Kansas Supreme Court. Term No. 409. H. F. Ferry, plaintiff in error, vs. W. O. James, C. L. King and L. D. Hadley. Term No. 410. C. L. Harris, as executor of the last will and testament of T A. Kramer, deceased, plaintiff in error, vs. W. O. James, C. L. King, H. F. Ferry, et al. Filed July 28th, 1927. File Nos. 32,861, 32,862.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 411

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

RAMSEY PETROLEUM COMPANY, C. L. KING, L. D. HADLEY, ET AL.

No. 412

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

vs.

RAMSEY PETROLEUM COMPANY, C. L. KING, L. D. HADLEY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

FILED JULY 26, 1927

(32,863, 32,864)

(32,863, 32,864)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 411

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

RAMSEY PETROLEUM COMPANY, C. L. KING, L. D. HADLEY, ET AL.

No. 412

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

vs.

RAMSEY PETROLEUM COMPANY, C. L. KING, L. D. HADLEY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 16, 1927

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[fols. a-d] [Caption omitted]

[fols. e-439]

IN SUPREME COURT OF KANSAS

No. 27213

Ramsey Petroleum Company, Appellant,

v.

E. F. Adams et al., Appellees

No. 27217

Ramsey Petroleum Company, Appellant,

v.

E. F. Adams et al., Appellees

No. 27230

Ramsey Petroleum Company, Appellant,

v.

E. F. Adams et al., Appellees

Order Consolidating Cases—July 1, 1926

Now comes on for decision the joint motion of the parties to these proceedings and moves the court for an order to consolidate with the case of G. L. Ramsey, Appellant, v. E. F. Adams, et al., appellees, No. 27,109. It is ordered that appeals to be taken in similar cases involving the same issue be consolidated with 27109 and heard as one case in this court.

[fols. 440 & 441] Minute entry of argument and submission November 5, 1926, omitted in printing.

[fols. 442-453] In Supreme Court of Kansas

Nos. 27109, 27213, 27217, 27230, Consolidated

The Ramsey Petroleum Company, Appellant and Cross-Appellee,

v.

E. F. Adams et al., etc., Appellees and Cross-Appellants

Judgment—February 12, 1927

These causes come on for decision and thereupon it is ordered and adjudged that judgment in favor of T. L. Harris as executor of the estate of T. A. Kramer, deceased, be reversed and remanded with instructions to render judgment for the plaintiff. In other respects the judgment is affirmed. It is further ordered that the defendants pay the costs of this case in this court taxed at $— and hereof let execution issue.

[fols. 454-457] Petition for rehearing of King and Ferry, covering three pages, filed March 3, 1927, omitted from this print. It was denied and nothing more by order April 16, 1927.

[fols. 458 & 459] Petition for rehearing of C. L. Harris, covering sixty pages, filed March 10, 1927, omitted in this print. It was denied and nothing more by order April 16, 1927.

[fol. 460] In Supreme Court of Kansas

[Title omitted]

Order Denying Motions for Rehearing—April 16, 1927

Now comes on for decision the motion for a rehearing of these causes; and thereupon it is ordered that said motion for a rehearing be overruled.

[fols. 461 & 462] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 463 & 463½] In Supreme Court of Kansas

[Title omitted]

Petition for Writ of Error—Filed June 15, 1927

To the Honorable Chief Justice of the Supreme Court of the State of Kansas:

Your petitioner, H. F. Ferry, respectfully shows that on the 16th day of April A. D. 1927, the Supreme Court of the State of Kansas, rendered a final judgment and decision against your petitioner in the above entitled cause, affirming the judgment of the District Court of Butler County, Kansas, against your petitioner and in favor of the Ramsey Petroleum Company, a corporation, appellant and cross-appellee, and remanding said cause to the said District Court of Butler County, Kansas, with instructions to carry out the judgment in favor of the said The Ramsey Petroleum Company, a corporation, and against your petitioner, the appeal notwithstanding, all as will more fully appear by reference to the record and proceedings in said cause.

That said Supreme Court of the State of Kansas, is the highest court of the State of Kansas, in which a decision in said suit could be had and considering himself aggrieved by said final decision of the Supreme Court of the State of Kansas, your petitioner hereby prays the allowance of the writ of error from the said decision and judgment of the Supreme Court of the State of Kansas, to the Supreme Court of the United States, and for a citation and an order fixing the amount of bond.

And your petitioner will ever pray, etc.

T. J. Bond, El Dorado, Kan., Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 464½] IN SUPREME COURT OF KANSAS

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed June 15, 1927

To the Honorable Chief Justice of the Supreme Court of the State of Kansas:

Your petitioner, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, respectfully shows that on the 16th day of April A. D. 1927, the Supreme Court of the State of Kansas, rendered a final judgment and decision against your petitioner in the above entitled cause, reversing the judgment of the District Court of Butler County, Kansas, in your petitioner's favor, and remanding said cause to said District Court of Butler County, Kansas, with instructions to said court to render judgment in favor of said appellant, The Ramsey Petroleum Company, a corporation, and against your petitioner, as will more fully appear by reference to the record and proceedings in said cause.

That said Supreme Court of the State of Kansas, is the highest court of the State of Kansas, in which a decision in said suit could be had, and considering himself aggrieved by said final judgment and decision of the Supreme Court of the State of Kansas, your petitioner hereby prays the allowance of a writ of error from the said decision and judgment of the Supreme Court of the State of Kansas, to the Supreme Court of the United States, and for a citation and an order fixing the amount of bond.

And your petition- will ever pray, etc.

Bruce A. Campbell, East St. Louis; Bennett R. Wheeler, S. M. Brewster, John L. Hunt, Topeka, Ks., Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 465] [File endorsement omitted]

IN SUPREME COURT OF KANSAS

[Title omitted]

ASSIGNMENTS OF ERROR—Filed June 15, 1927

Now comes the appellant, H. F. Ferry, and in connection with his petition for a writ of error, and as an assignment of errors, says:

That during all the time mentioned in the above entitled cause, he was a citizen of the State of Kansas, and a citizen of the United States of America; that the above entitled cause is one in which the appellee, The Ramsey Petroleum Company, a corporation, sought to recover from said appellant, the sum of $27,211.96, with interest, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out on account of the alleged violation of said statutes by said appellant while a director of the Butler County State Bank, a banking corporation organized and doing business under the laws of the State of Kansas, and in Butler County, Kansas.

Said appellant says that in the above entitled cause, in the trial court, being the District Court of Butler County, Kansas, and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"It shall be unlawful for any president, director, manager, cashier or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact, that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same and if possible to know its condition. And upon failure of any such person to discharge such duties, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually

responsible for such deposits so received and all such debts so contracted: Provided, any director who may have paid [fol. 466] more than his share of the liabilities mentioned in this section, may have the proper remedy at law against such other persons as shall not have paid their full share of liabilities."

was drawn in question by said appellant on the ground that said statute in question was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity and constitutionality of said statute.

And in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"In all suits brought for the recovery of the amount of any deposit received or debts so created all officers, agents or managers of any such banking institution, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposits or creation of such debt on the part of such officer, agent or manager, so charged therewith."

was drawn in question by said appellant on the ground of said statute being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute. And said appellant respectfully says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Kansas, in the above entitled caluse, there is manifest error, to wit:

First. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-163 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions

of the Fourteenth Amendment to the Constitution of the United States.

Second. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-164 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fols. 467 & 467½] Third. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, said appellant was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, said appellant was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, the said appellant was not deprived of property without due process of law.

Sixth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the said appellant was not deprived of property without due process of law.

Seventh. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, the appellant was not denied equal protection of the law.

Eighth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the appellant was not denied equal protection of the law.

For which errors the said appellant, H. F. Ferry, prays that said judgment of the Supreme Court of the State of Kansas, be reversed and a judgment be rendered in favor of said appellant and for costs.

L. J. Bond, Eldorado, Kansas, Attorney for H. F. Ferry.

[fol. 468] [File endorsement omitted]

IN SUPREME COURT OF KANSAS

[Title omitted]

ASSIGNMENTS OF ERROR—Filed June 15, 1927

Now comes the appellee, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, and in connection with his petition for a writ of error and as assignment of errors, says:

That he is now and during all the times mentioned in the above entitled cause, was a citizen of the State of Kansas, and a citizen of the United States of America, as was also during his life time the said T. A. Kramer; that the above entitled cause is one in which the appellant The Ramsey Petroleum Company, a corporation, sought to recover from said appellee, the sum of $27,211.96, with interest, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said appellee's decedent T. A. Kramer, while a director of the Butler County State Bank, a banking corporation, organized and doing business under the laws of the State of Kansas, and in Butler County, Kansas.

Said appellee says that in the above entitled cause in the trial court, being the District Court of Butler County, Kansas, and in the Supreme Court of the State of Kansas, the validity of Sec. 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution, to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowl-

edge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution, to examine into the affairs of same, and if possible, to know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, [fol. 469] or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposit so received and all such debts so contracted; Provided, any director who may have paid more than his share of the liabilities mentioned in this section, may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities."

was drawn in question by said appellee on the ground that said statute in question was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity and constitutionality of said statute.

And in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents or managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith."

was drawn in question by said appellee on the ground of said statute being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

And said appellee respectfully says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Kansas, in the above entitled cause, there is manifest error in this, to wit:

First. The Supreme court of the State of Kansas, erred, in holding and deciding that the provisions of Section 9-163, Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Second. The Supreme court of the State of Kansas, erred, in holding and deciding that the provisions of Section 9-164, Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fol. 470] Third. The Supreme Court of the State of Kansas, erred, in holding and deciding that by the provisions of Section 9-163 Revised Statutes of the State of Kansas, said appellee was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth. The Supreme court of the State of Kansas, erred in holding and deciding that by the provisions of section 9-164 Revised Statutes of the State of Kansas, said appellee was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth. The Supreme court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163, Revised Statutes of the State of Kansas, the said appellee was not deprived of property without due process of law.

Sixth. The Supreme court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164, Revised Statutes of the State of Kansas, the said appellee was not deprived of property without due process of law.

Seventh. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said

Section 9-163, Revised Statutes of the State of Kansas, did not deny to said appellee equal protection of the law.

Eighth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-164 Revised Statutes of the State of Kansas, did not deny to said appellee equal protection of the law.

Ninth. The Supreme court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, as interpreted by the Supreme Court of the State of Kansas, did not deny to said appellee equal protection of the law, in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make examination into the affairs of the said Butler County State Bank, during the time in question in said cause.

Tenth. The Supreme court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, which provide that if an officer or director of a bank does not examine into the affairs of the bank, he shall be held to have knowledge of the condition of the bank were not in violation of the Fourteenth Amendment to the Constitution of the United States, and did not, as interpreted by said court, deprive appellee of property without due process of law, when the circumstances were that during the time in question it was impossible for said appellee's decedent T. A. Kramer, a director of said bank to make an examination of said bank.

[fols. 471 & 471½] Eleventh. The Supreme court of the State of Kansas, erred in holding and deciding, that the provisions of said section 9-163 Revised Statutes of the State of Kansas, which by its terms created a conclusive presumption of knowledge against said appellee's decedent, T. A. Kramer, were not in violation of the Fourteenth Amendment of the Constitution of the United States.

Twelfth. The Supreme Court of the State of Kansas, erred in holding and deciding, that the provisions of said Section 9-164 Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent or in failing circumstances at the

time of the reception of the deposits charged to have been received, prima facie evidence of the assent of said appellee's decedent, T. A. Kramer, to such deposit, were not in violation of the Fourteenth Amendment of the Constitution of the United States.

Thirteenth. The Supreme Court of the State of Kansas, has held and decided herein, that the provisions of said section 9-163 Revised Statutes of the State of Kansas, created a conclusive presumption of knowledge and has held and decided herein that under said provisions said appellee would not be permitted to show any reason or excuse whatsoever, why his decedent, T. A. Kramer, had not made an examination into the affairs of the said Butler County State Bank, and in so holding and deciding, erred in holding and deciding that said statute as so interpreted was not in violation of the Fourteenth Amendment of the Constitution of the United States.

For which errors the said appellee, C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, prays that said judgment of the Supreme Court of the State of Kansas, be reversed and a judgment be rendered in favor of said appellee and for costs.

—— ——, Attorneys for C. L. Harris, Executor of the Last Will and Testament of T. A. Kramer, Deceased.

[fols. 472 & 472½] In Supreme Court of Kansas

[Title omitted]

Order Allowing Writ of Error—Filed June 15, 1927

The above entitled matter coming on to be heard upon the petition of H. F. Ferry, appellant therein for writ of error from the Supreme Court of the United States, to the Supreme Court of the State of Kansas, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter—

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[File endorsement omitted.]

[fol. 473] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER ALLOWING WRIT OF ERROR—Filed June 15, 1927

The above entitled matter coming on to be heard upon the petition of C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee therein, for writ of error from the Supreme Court of the United States, to the Supreme Court of the State of Kansas, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter.

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[fol. 473½] [File endorsement omitted.]

[fols. 474 & 474½] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER FIXING BOND

Now on this 15th day of June, 1927, came on to be heard the application of H. F. Ferry, appellant, for an order

fixing the amount of the bond for costs on appeal to the Supreme Court of the United States, in the above entitled action, and the court being fully informed in the premises, doth fix the amount of said bond for costs at One Thousand Dollars ($1,000.00) conditioned that the said H. F. Ferry, shall pay all costs that may accrue in said action, to the parties to this action, or to the officers of this court, or to the officers of the Supreme Court of the United States or any other person, in case he shall be adjudged to pay them; or in case the same cannot be collected from the other parties to this action, if judgment be obtained against them, then that the said H. F. Ferry will pay all such costs.

Said bond to be approved by the clerk of said court.

W. A. Johnston, Chief Justice.

[fols. 475 & 475½] In Supreme Court of Kansas

[Title omitted]

Order Fixing Bond

Now on this 15th day of June, 1927, came on to be heard the application of C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, for an order fixing the amount of the bond for costs on appeal to the Supreme Court of the United States in the above entitled action, and the court being fully informed in the premises, doth fix the amount of said bond for costs at One Thousand Dollars ($1,000.00), conditioned that the said C. L. Harris, as such executor, shall pay all costs that may accrue in said action, to the parties to this action, or to the officers of this court or to the officers of the Supreme Court of the United States or any other persons, in case he shall be adjudged to pay them; or in case the same cannot be collected from the other parties to this action, if judgment be obtained against them, then that the said C. L. Harris, as such executor, will pay all such costs.

Said bond to be approved by clerk of said court.

W. A. Johnston, Chief Justice.

[fols. 476 & 476½] In Supreme Court of Kansas

Writ of Error—Filed June 15, 1927

The United States of America, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record, proceedings and judgment in a cause lately pending in the Supreme Court of the State of Kansas, being the highest court of said State, in which a decision in the cause could be had between The Ramsey Petroleum Company, a corporation, appellant and cross-appellee, vs. E. F. Adams, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellees, and C. L. King, H. F. Ferry and L. D. Hadley, cross-appellants, wherein was drawn in question the validity of certain statutes of the said State of Kansas, on the ground of their being repugnant to the Constitution of the United States of America, and particularly to the Fourteenth Amendment to said Constitution, and the decision was in favor of such, their validity; it appears that the said H. F. Ferry, appellant is entitled to have the said judgment reviewed by the Supreme Court of the United States, and he having presented a petition for a writ of error, and assignments of error to that end;

And we being willing that error, if any hath occurred, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you that under your seal, distinctly and openly, you send the record, proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof, so that the said Supreme Court of the United States may examine and consider the same and may cause further to be done to correct the error therein if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness The Honorable William Howard Taft, Chief Justice of the United States, this 15th day of June, in the

year of our Lord one thousand nine hundred and twenty-seven.

F. L. Campbell, Clerk of the U. S. District Court.
(Seal of District Court U. S., District of Kansas.)

Allowed by W. A. Johnston, Chief Justice.

[File endorsement omitted.]

[fol. 477] IN SUPREME COURT OF KANSAS

WRIT OF ERROR—Filed June 15, 1927

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record, proceedings and judgment in a cause lately pending in the Supreme Court of the State of Kansas, being the highest court of the said State, in which a decision in the cause could be had between The Ramsey Petroleum Company, a corporation, appellant and cross-appellee, vs. E. F. Adams, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, and C. L. King, H. F. Ferry and L. D. Hadley, cross-appellants, wherein was drawn in question the validity of certain statutes of the said State of Kansas, on the ground of their being repugnant to the Constitution of the United States of America, and particularly to the Fourteenth Amendment to said Constitution, and the decision was in favor of such, their validity; it appears that the said C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, is entitled to have the said judgment, reviewed by the Supreme Court of the United States, and he having presented a petition for a writ of error, and assignments of error to that end;

And we being willing that error, if any hath occurred should be duly correct- and full and speedy justice done to the parties aforesaid, in this behalf, do command you that under your seal, distinctly and openly, you send the record,

proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof, so that the said Supreme Court of the United States may examine and consider the same and may cause further to be done to correct the error therein if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness The Honorable William Howard Taft, Chief Justice of the United States, the 15th day of June in the year of our Lord one thousand nine hundred and twenty-seven.

F. L. Campbell, Clerk of the U. S. District Court.
(Seal of District Court U. S., District of Kansas.)

Allowed by W. A. Johnston, Chief Justice.

[fol. 477½] [File endorsement omitted.]

[fols. 478-479½] Bonds on writs of error for $1,000.00 each, approved and filed June 15, 1917, omitted in printing.

[fols. 480-485½] Citations in usual form showing service on C. L. Harris et al., filed June 21, 1927, omitted in printing.

[fol. 486] Certificate of lodgment omitted in printing.

[fol. 487] Return to writ of error omitted in printing.

[fols. 487a-492] Orders enlarging time omitted in printing.

[fol. 493] IN SUPREME COURT OF THE UNITED STATES

No. 411

STATEMENT OF POINTS ON WHICH PLAINTIFF IN ERROR INTENDS TO RELY—Filed August 4, 1927

I

The plaintiff in error, H. F. Ferry, contends that the above entitled cause is one in which the defendant in error, Ramsey Petroleum Company, a depositor in the Butler County State Bank, of Butler County, Kansas, sought to recover from said plaintiff in error a sum of money, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said plaintiff in error, while a director of said Butler County State Bank.

II

The plaintiff in error contends that in the above entitled cause, in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, to-wit.

"It shall be unlawful for any president, director, manager, cashier, or any other officer of any banking institution to assent to the reception of any deposits or the creation of debts by such banking institution after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and if possible know its condition. And upon the failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted: Provided, any director who may have paid more than his share of the liabilities mentioned in this section may have the proper

[fol. 494] remedy at law against such other persons as shall not have paid their full share of said liabilities."

was drawn in question by said plaintiff in error on the ground that said statute was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute, and in the trial Court and the Supreme Court of the State of Kansas, the validity of Section 9-164, of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"In all the suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents and managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge on the part of such officer, agent or manager so charged therewith"

was drawn in question by the plaintiff in error on the ground that the statute was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

III

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, were valid; and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-163, of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not denied the equal protection of the law.

IV

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteen Amendment to the Constitution of the United States, and in holding and deciding that by the pro-[fol. 495] visions of said section 9-164 of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

V

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, which by its terms created a conclusive presumption of knowledge against said plaintiff in error, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VI

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent, or in failing circumstances at the time of the reception of the deposit charged to have been received prima facie evidence of the assent of the plaintiff in error, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VII

Plaintiff in error contends that the evidence in said cause fails to show that he knew the said Butler County State Bank was insolvent at the time in question, and fails to

show that said Butler County State Bank was insolvent at the time in question, and that the evidence in this cause fails to show that the plaintiff in error assented to the reception of the deposits in question.

VIII

Said plaintiff in error further states that he thinks it necessary for the consideration of the above points that all of the record be printed.

[fols. 496 & 497] L. J. Bond, J. B. McKay, Attorneys for Plaintiff in Error.

Received a copy of the above statement the 29 day of July, 1927.

C. L. Harris, as Executor of the Estate of T. A. Kramer, Deceased. L. D. Hadley, C. L. King, Defendants in Error. John J. Jones, B. R. Leydeg, Attorneys for Ramsey Petroleum Company, Defendant in Error.

[fol. 498] [File endorsement omitted.]

[fol. 499] In Supreme Court of the United States

No. 412

Statement of Points on Which Plaintiff in Error Intends to Rely—Filed July 29, 1927

I

The plaintiff in error, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, contends that the above entitled cause is one in which the defendant in error, Ramsey Petroleum Company, a depositor in the Butler County State Bank, of Butler County, Kansas, sought to recover from said plaintiff in error a sum of money, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said plaintiff in error's decedent, T. A. Kramer, while a director of said Butler County State Bank.

II

The plaintiff in error contends that in the above entitled cause, in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

[fol. 500] "It shall be unlawful for any president, director, manager, cashier, or any other officer of any banking institution to assent to the reception of any deposits or the creation of debts by such banking institution after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and if possible know its condition. And upon the failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted: Provided, Any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of said liabilities.

was drawn in question by said plaintiff in error on the ground that said statute was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute, and that on the trial Court and the Supreme Court of the State of Kansas, the validity of Section 9-164, of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"In all the suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents and managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit

charged to have been so received or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge on the part of such officer, agent or manager so charged therewith"

was drawn in question by the plaintiff in error on the ground that the statute was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

[fol. 501]

III

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163, of the Revised Statutes of the State of Kansas, for the year 1923, were valid, and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-163, of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not denied the equal protection of the law.

IV

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164, of the Revised Statutes of the State of Kansas, for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said section 9-164 of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

V

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes

of Kansas, as interpreted by the said Court did not deny to said plaintiff in error the equal protection of the law in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make an examination into the affairs of the said Butler county [fol. 502] state bank during the time in question in said cause, and the *the* Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, which provides that if an officer or a director of a bank does not examine into the affairs of the bank, he shall be held to have had knowledge of the condition of the bank, were not in violation of the Fourteenth Amendment to the Constitution of the United States, and did not, as interpreted by the Supreme court of the State of Kansas, deprive said plaintiff in error of property without due process of law, when the circumstances were that, during the time in question, it was impossible for the plaintiff in error's decedent—T. A. Kramer, a director in said bank, to make an examination of said bank.

VI

Plaintiff in error holds that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163, of the Revised Statutes of the State of Kansas for the year 1923, which by its terms created a conclusive presumption of kn-wledge against said plaintiff in error's decedent, T. A. Kramer, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VII

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent, or in failing circumstances at the time of the reception of the deposit charged to have been received prima facie evidence of the assent of the plaintiff in error's decedent, T. A. Kramer, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 503] VIII

Plaintiff in error contends that the Supreme Court of the State of Kansas has erred in deciding that in this cause the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas, created a conclusive persumption of knowledge, and has erred in deciding in this cause that under said provisions said plaintiff in error would not be permitted to show any reason or excuse whatsoever why his decedent, T. A. Kramer, had not made any examination into the affairs of the said Butler County State Bank, and in so holding and deciding erred in holding and deciding that said statute as so interpreted was not in violation of the Fourteenth Amendment to the Constitution of the United States.

IX

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the fact that the plaintiff in error's decedent, T. A. Kramer, was mentally and physically incapable of examining into the affairs of the said Butler County State Bank during all the time in question in this cause would not relieve said decedent from the duty of examining into the affairs of said bank during said time.

X

Plaintiff in error contends that the evidence in said cause fails to show that his decedent, T. A. Kramer, knew the said Butler County State Bank was insolvent at the time in question, and fails to show that said Butler County State Bank was insolvent at the time in question, and that the evidence in this cause fails to show that the plaintiff in error's decedent, T. A. Kramer assented to the reception of the deposits in question, and that the evidence in this cause shows that during all the time in question plaintiff in error's decedent, T. A. Kramer, was mentally and physically unable to assent [fols. 504-512] to the reception of said deposits or to examine into the affairs of said bank, without any fault on the part of said decedent.

XI

Said plaintiff in error further states that he thinks it necessary for the consideration of the above points that all of the record be printed.

John L. Hunt, Bruce A. Campbell, Attorneys for plaintiff in Error.

Received a copy of the above statement the 26th day of July, 1927.

John J. Jones, Attorney for Ramsey Petroleum Company, Defendant in Error.

[fol. 513] [File endorsement omitted.]

[fol. 514] Supreme Court of the United States, October Term, 1927

Nos. 407 to 418

Order Consolidating Causes and as to Printing—October 31, 1927

On consideration of a motion of counsel for the plaintiffs in error in these cases to consolidate them all for hearing, with directions to print the whole record in two of the cases and only so much of the record in the remaining cases as is ne-ssary to show the difference between the cases.

It is now here ordered that the said motion be, and the same is hereby, granted, the ultimate cost of printing, of course, to await the event, and the effect of any omission to print, to be at the risk of the plaintiffs in error moving for the consolidation and the limitation of printing.

October 31, 1927.

Endorsed on cover: File Nos. 32,863, 32,864. Kansas Supreme Court. Term No. 411. H. F. Ferry, plaintiff in error, vs. Ramsey Petroleum Company, C. L. King, L. D. Hadley, et al. Term No. 412. C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, plaintiff in error, vs. Ramsey Petroleum Company, C. L. King, L. D. Hadley, et al. Filed July 28, 1927. File Nos. 32,863, 32,864.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 413

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

G. L. RAMSEY, C. L. KING, ET AL.

No. 414

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

vs.

G. L. RAMSEY, C. L. KING, H. F. FERRY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

FILED JULY 28, 1927

(32,865, 32,866)

(32,865, 32,866)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 413

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

G. L. RAMSEY, C. L. KING, ET AL.

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C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

vs.

G. L. RAMSEY, C. L. KING, H. F. FERRY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 19, 1927

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[fols. a-e] [Captions omitted]

[fols. f-439]

IN SUPREME COURT OF KANSAS

No. 27213

RAMSEY PETROLEUM COMPANY, Appellant,

v.

E. F. ADAMS et al., Appellees

No. 27217

RAMSEY PETROLEUM COMPANY, Appellant,

v.

E. F. ADAMS et al., Appellees

No. 27230

RAMSEY PETROLEUM COMPANY, Appellant,

v.

E. F. ADAMS et al., Appellees

ORDER CONSOLIDATING CASES—July 1, 1926

Now comes on for decision the joint motion of the parties to these proceedings and moves the court for an order to consolidated with the case of G. L. Ramsey, Appellant, vs. E. F. Adams et al., appellees, No. 27,109. It is ordered that appeals to be taken in similar cases involving the same issues be consolidated with 27109, and heard as one case in this court.

[fols. 440 & 441] Minute entry of argument and submission Nov. 5, 1926, omitted in printing.

[fols. 442-445] In Supreme Court of Kansas

No. 27,109

G. L. Ramsey, Appellant and Cross Appellee,

v.

E. F. Adams et al., etc., Appellees and Cross Appellants

Judgment—February 12, 1927

These causes come on for decision and thereupon it is ordered and adjudged that judgment in favor of T. L. Harris as executor of the estate of T. A. Kramer, deceased, be reversed and remanded with instructions to render judgment for the plaintiff. In other respects the judgment is affirmed. It is further ordered that the defendants pay the costs of this case in this court taxed at $— and hereof let execution issue.

[fols. 446-449] Petition for rehearing of King and Ferry covering 3 pages, filed Mar. 3, 1927, omitted from this print. It was denied and nothing more by order April 16, 1927.

[fols. 450 & 451] Petition for rehearing of C. L. Harris covering 60 pages, filed Mar 10, 1927, omitted from this print. It was denied and nothing more by order April 16, 1927.

[fol. 452] In Supreme Court of Kansas

[Title omitted]

Order Denying Rehearing—April 16, 1927

Now comes on for decision the motion for a rehearing of this cause; and thereupon it is ordered that said motion for a rehearing be overruled.

[fols. 453 & 454] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 455 & 455½] IN SUPREME COURT OF KANSAS

[Title omitted]

[File endorsement omitted]

PETITION FOR WRIT OF ERROR—Filed June 15, 1927

To the Honorable Chief Justice of the Supreme Court of the State of Kansas:

Your petitioner, H. F. Ferry, respectfully shows that on the 16th day of April, A. D. 1927, the Supreme Court of the State of Kansas, rendered a final judgment and decision against your petitioner in the above entitled cause, affirming the judgment of the District Court of Butler County, Kansas, against your petitioner and in favor of the appellant and cross-appellee G. L. Ramsey, and remanding said cause to said District Court of Butler County, Kansas, with instructions to carry out the judgment in favor of the said G. L. Ramsey and against your petitioner, the appeal notwithstanding, all as will more fully appear by reference to the record and proceedings in said cause.

That said Supreme Court of the State of Kansas, is the highest court of the State of Kansas, in which a decision in said suit could be had and considering himself aggrieved by said final judgment and decision of the Supreme Court of the State of Kansas, your petitioner hereby prays the allowance of the writ of error from the said decision and judgment of the Supreme Court of the State of Kansas, to the Supreme Court of the United States, and for a citation and an order fixing the amount of bond.

And your petitioner will ever pray, etc.

L. J. Bond, Eldorado, Kan., Attorneys for Petitioner.

[fol. 456] IN SUPREME COURT OF KANSAS

[Title omitted]

[File endorsement omitted]

PETITION FOR WRIT OF ERROR—Filed June 15, 1927

To the Honorable Chief Justice of the Supreme Court of the State of Kansas:

Your petitioner, C. L. Harris, executor of the Last Will and Testament of T. A. Kramer, deceased, respectfully shows that on the 16th day of April, A. D. 1927, the Supreme Court of the State of Kansas rendered a final judgment and decision against your petitioner in the above entitled cause, reversing the judgment of the District Court of Butler County, Kansas, in your petitioner's favor and remanding said cause to said District Court of Butler County, Kansas, with instructions to render judgment in favor of said Appellant, G. L. Ramsey, and against your petitioner, as will more fully appear by reference to the record and proceedings in said cause. That said Supreme Court of the State of Kansas is the highest court of the State of Kansas in which a decision in said suit could be had, and considering himself aggrieved by said final judgment and decision of the Supreme Court of the State of Kansas, your petitioner hereby prays the allowance of a [fols. 457 & 457½] writ of error from the said decision and judgment of the Supreme Court of the State of Kansas to the Supreme Court of the United States, and for a citation and an order fixing the amount of bond.

And your petitioner will ever pray, etc.

C. L. Harris, Eldorado, Bruce A. Campbell, East St. Louis, Bennett R. Wheeler, S. M. Brewster, John L. Hunt, Topeka Kan., Attorneys for Petitioner.

IN SUPREME COURT OF KANSAS

[Title omitted]

[fol. 458] [File endorsement omitted]

ASSIGNMENTS OF ERROR—Filed June 15, 1927

Now comes the appellant, H. F. Ferry, and in connection with his petition for a writ of error and as an assignment of errors, says:

That during all the time mentioned in the above entitled cause, he was a citizen of the State of Kansas, and a citizen of the United States of America; that the above entitled cause is one in which the appellee, G. L. Ramsey, sought to recover from said appellant, the sum of $22,726.16 with interest, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said appellant while a director of the Butler County State Bank, a banking corporation organized and doing business under the laws of the State of Kansas, and in Butler County, Kansas.

Said appellant says, that in the above entitled cause in the trial court, being the District Court of Butler County, Kansas, and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same and if possible to know its condition. And upon failure of any such person to discharge such duties, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such [fol. 459] bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received

and all such debts so contracted: Provided, any director who may have paid more than his share of the liabilities mentioned in this section, may have the proper remedy at law against such other persons as shall not have paid their full share or liabilities."

was drawn in question by said appellant on the ground that said statute in question was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity and constitutionality of said statute.

And in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, to-wit:

"In all suits brought for the recovery of the amount of any deposit received or debts so created, all officers, agents or managers of any such banking institution, charged with having so assented to the reception of such deposit or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposits or creation of such debts on the part of such officers, agent, or manager so charged therewith."

was drawn in question by said appellant on the ground of said statute being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

And said appellant respectfully says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Kansas, in the above entitled cause, there is manifest error in this, to wit:

First: The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-163 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions

of the Fourteenth Amendment to the Constitution of the United States.

Second: The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-164 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fols. 460 & 460½] Third: The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, said appellant was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth: The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, said appellant was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth: The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the said appellant was not deprived of property without due process of law.

Sixth: The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, the said appellant was not deprived of property without due process of law.

Seventh: The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, the appellant was not denied equal protection of the law.

Eighth: The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the appellant was not denied equal protection of the law.

For which errors the said appellant H. F. Ferry, prays that said judgment of the Supreme Court of the State of Kansas, be reversed and a judgment be rendered in favor of said appellant and for costs.

L. J. Bond, Eldorado, Kansas, Attorneys for H. F. Ferry.

[fol. 461] [File endorsement omitted]

IN SUPREME COURT OF KANSAS

[Title omitted]

ASSIGNMENTS OF ERROR—Filed June 15, 1927

And now comes the appellee, C. L. Harris, Executor of the Last Will and Testament of T. A. Kramer, deceased, and says that he is now, and during all the times mentioned in the above entitled cause was, a citizen of the State of Kansas and a citizen of the United States of America. That the above entitled cause is one in which the appellant, G. L. Ramsey, sought to recover from said appellee the sum of $22,726.16, with interest, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said appellee's decedent, T. A. Kramer, while a director of the Butler County State Bank.

And said appellee says that in the above entitled cause in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution, to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and if possible, know [fol. 462] its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this

act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted: Provided, Any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities."

was drawn in question by said appellee on the ground of said statute's being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute.

And in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents or managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith."

was drawn in question by said appellee on the ground of said statute's being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute.

And said appellee respectfully says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Kansas in the above entitled cause, there is manifest error in this, to-wit:

First. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, were valid

and were not in conflict with and in violation of the provi-
[fol. 463] sions of the Fourteenth Amendment to the Constitution of the United States.

Second. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164, Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Third. The Supreme Court of the State of Kansas erred in holding and deciding that by the provisions of said Section 9-163, Revised Statutes of the State of Kansas, said appellee was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth. The Supreme Court of the State of Kansas erred in holding and deciding that by the provisions of said Section 9-164, Revised Statutes of the State of Kansas, said appellee was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth. The Supreme Court of the State of Kansas erred in holding and deciding that by the provisions of said Section 9-163, Revised Statutes of the State of Kansas, the said appellee was not deprived of property without due process of law.

Sixth. The Supreme Court of the State of Kansas erred in holding and deciding that by the provisions of said Section 9-164, Revised Statutes of the State of Kansas, the said appellee was not deprived of property without due process of law.

Seventh. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163, Revised Statutes of the State of Kansas, did not deny to said appellee the equal protection of the law.

[fol. 464] Eighth. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164, Revised Statutes of the State of Kansas, did not deny to said appellee the equal protection of the law.

Ninth. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163, Revised Statutes of the State of Kansas, as interpreted by said court, did not deny to said appellee the equal protection of the law in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make an examination into the affairs of the said Butler County State Bank during the time in question in said cause.

Tenth. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163, Revised Statutes of the State of Kansas, which provide that if an officer or director of a bank does not examine into the affairs of the bank, he shall be held to have had knowledge of the condition of the bank, were not in violation of the Fourteenth Amendment to the Constitution of the United States, and did not, as interpreted by said court, deprive said appellee of property without due process of law, when the circumstances were that, during the time in question, it was impossible for said appellee's decedent, T. A. Kramer, a director of said bank, to make an examination of said bank.

Eleventh. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163, Revised Statutes of the State of Kansas, which by its terms created a conclusive presumption of knowledge against said appellee's decedent, T. A. Kramer, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

[fols. 465 & 465½] Twelfth. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164, Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent, or in failing circumstances, at the time of the reception of the deposit charged to have been received prima facie evidence of the assent of said appellee's decedent, T. A. Kramer, to such deposit, were not in violation of the Fourteenth Amendment of the Constitution of the United States.

Thirteenth. The Supreme Court of the State of Kansas has held and decided herein that the provisions of said Section 9-163, Revised Statutes of the State of Kansas, created a conclusive presumption of knowledge, and has held and decided herein that under said provisions said appellee would not be permitted to show any reason or excuse whatsoever why his decedent, T. A. Kramer, had not made an examination into the affairs of the said Butler County State Bank, and in so holding and deciding erred in holding and deciding that said statute as so interpreted was not in violation of the Fourteenth Amendment to the Constitution of the United States.

For which errors the said appellee, C. L. Harris, Executor of the Last Will and Testament of T. A. Kramer, deceased, prays that the said judgment of the Supreme Court of the State of Kansas be reversed and a judgment rendered in favor of the said appellee and for costs.

Bruce A. Campbell, East St. Louis; C. L. Harris Eldorado, Kans.; Bennett R. Wheeler, S. M. Brewster, John L. Hart, Topeka, Kans., Attorneys for C. L. Harris, Executor of the Last Will and Testament of T. A. Kramer, deceased.

[fols. 466 & 466½] In Supreme Court of Kansas

[Title omitted]

Order Allowing Writ of Error—Filed June 15, 1927

The above entitled matter coming on to be heard upon the petition of H. F. Ferry, appellant therein, for writ of error from the Supreme Court of the United States, to the Supreme Court of the State of Kansas, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter—

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States,

and that the bond presented by said petitioner be, and the same is hereby approved.

W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[File endorsement omitted.]

[fols. 467 & 467½] In Supreme Court of Kansas

[Title omitted]

Order Allowing Writ of Error—Filed June 15, 1927

The above entitled matter coming on to be heard, upon the petition of C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee therein, for writ of error from the Supreme Court of the United States, to the Supreme Court of the State of Kansas, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter—

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[File endorsement omitted.]

[fols. 468 & 468½] In Supreme Court of Kansas

[Title omitted]

Order Fixing Bond

Now on this 15th day of June 1927, came on to be heard the application of H. F. Ferry, appellant, for an order fixing the amount of the bond for the costs on appeal to the Supreme Court of the United States, in the above entitled action, and the court being fully informed in the premises,

doth fix the amount of said bond for costs at One Thousand Dollars ($1,000.00) conditioned that the said H. F. Ferry, shall pay all costs that may accrue in said action, to the parties to this action, or to the officers of this court, or to the officers of the Supreme Court of the United States or any other person, in case he shall be adjudged to pay them; or in case the same cannot be collected from the other parties to this action, if judgment be obtained against them, then that the said H. F. Ferry will pay all such costs.

Said bond to be approved by the Clerk of said court.

W. A. Johnston, Chief Justice.

[fols. 469 & 469½] In Supreme Court of Kansas

[Title omitted]

Order Fixing Bond

Now on this 15th day of June, 1927, came on to be heard the application of C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, for an order fixing the amount of the bond for costs on appeal to the Supreme Court of the United States in the above entitled action, and the court being fully informed in the premises, doth fix the amount of said bond for costs at One Thousand Dollars ($1,000.00), conditioned that the said C. L. Harris, as such executor, shall pay all costs that may accrue in said action, to the parties to this action, or to the officers of this court or to the officers of the Supreme Court of the United States or any other persons, in case he shall be adjudged to pay them; or in case the same cannot be collected from the other parties to this action, if judgment be obtained against them, then that the said C. L. Harris, as such executor, will pay all such costs. Said bond to be approved by the clerk of said court.

W. A. Johnston, Chief Justice.

[fols. 470 & 470½] IN SUPREME COURT OF KANSAS

WRIT OF ERROR—Filed June 15, 1927

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record, proceedings and judgment in a cause lately pending in the Supreme Court of the State of Kansas, being the highest court of the said State, in which a decision in the cause could be had, between G. L. Ramsey, appellant, vs. E. F. Adams and C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, appellees, and C. L. King, A. B. Ewing, H. F. Ferry and L. D. Hadley, cross-appellants, vs. G. L. Ramsey and C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, cross-appellees, wherein was drawn in question the validity of certain statutes of the said State of Kansas, on the ground of their being repugnant to the Constitution of the United States of America, and particularly to the Fourteenth Amendment to said Constitution, and the decision was in favor of such, their validity; it appears that the said H. F. Ferry, appellant is entitled to have the said judgment reviewed by the Supreme Court of the United States, and he having presented a petition for a writ of error, and assignments of error to that end;

And we being willing that error, if any hath occurred, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you that under your seal, distinctly and openly, you send the record, proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof, so that the said Supreme Court of the United States may examine and consider the same and may cause further to be done to correct the error therein, if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Wil'm Howard Taft, Chief Justice of the United States, the 15th day of June, in the year of our Lord one thousand nine hundred and twenty-seven.

F. J. Campbell, Clerk of the U. S. Dist. Court.
(Seal of District Court U. S., District of Kansas, 1861.)

Allowed by W. A. Johnston, Chief Justice.

[fols. 471 & 471½] In Supreme Court of Kansas

Writ of Error—Filed June 15, 1927

The United States of America, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record, proceedings and judgment in a cause lately pending in the Supreme Court of the State of Kansas, being the highest court of the said State, in which a decision in the cause could be had, between G. L. Ramsey, appellant, vs. E. F. Adams and C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellees, and C. L. King, A. B. Ewing, H. F. Perry and L. D. Hadley, cross-appellants, vs. G. L. Ramsey and C. L. Harris, Executor of the last will and testament of T. A. Kramer, deceased, cross-appellees, wherein was drawn in question the validity of certain statutes of the said State of Kansas, on the ground of their being repugnant to the constitution of the United States of America, and particularly to the Fourteenth Amendment to said Constitution of the United States, and the decision was in favor of such, their validity; it appears that the said C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, is entitled to have the said judgment reviewed by the Supreme Court of the United States, and he having presented a petition for a writ of error, and assignments of error to that end;

And we being willing that error, if any hath occurred should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you that under your seal, distinctly and openly, you send the record, proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof, so that the said Supreme Court of the United States may examine and consider the same and may cause further to be done to correct the error therein, if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness The Honorable William Howard Taft, Chief Justice of the United States, the 15th day of June, in the year of our Lord one thousand nine hundred and Twenty-seven.

F. J. Campbell, Clerk of the U. S. Dist. Court.
(Seal of District Court U. S., District of Kansas, 1861.)

Allowed by W. A. Johnston, Chief Justice.

[fols. 472-473½] Bonds on writ of error for $1,000.00 each approved and filed June 15, 1927, omitted in printing.

[fols. 474-475½] Citation in usual form showing service on John J. Jones, et al., filed June 21, 1927, omitted in printing.

[fol. 476] Certificate of lodgment omitted in printing.

[fol. 477] Return to writ of error omitted in printing.

[fols. 478-484] Orders enlarging time omitted in printing.

[fol. 485] In Supreme Court of the United States

No. 413

Statement of Points on Which Plaintiff in Error Intends to Rely—Filed August 4, 1927

I

The plaitniff in error, H. F. Ferry, contends that the above entitled cause is one in which the defendant in error, G. L. Ramsey, a depositor in The Butler County State Bank of Butler County, Kansas, sought to recover from said plaintiff in error a sum of money, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said plaintiff in error, while a director of said Butler County State Bank.

II

The plaintiff in error contends that in the above entitled cause, in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"It shall be unlawful for any president, director, manager, cashier, or any other officer of any banking institution to assent to the reception of any deposits or the creation of debts by such banking institution after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and if possible know its condition. And upon the failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted: Provided, any director who may have paid more than his share of the liabilities mentioned in this

section may have the proper remedy at law against such other persons as shall not have paid their full share of said liabilities."

[fol. 486] was drawn in question by said plaintiff in error on the ground that said statute was repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute, and that in the trial court and the Supreme Court of the State of Kansas, the validity of Section 9-164, of the Revised Statutes of the State of Kansas for the year 1923, to wit:

"In all the suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents, and managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge on the part of such officer, agent or manager so charged therewith"

was drawn in question by the plaintiff in error on the ground that the statute was repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

III

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163, of the Revised Statutes of the State of Kansas, for the year 1923, were valid, and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-163, of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other

citizens of the United States, and was not denied the equal protection of the law.

IV

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164, of the Revised Statutes of the State of Kansas, for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the constitution of the United States, and in holding and deciding that by the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, said plaintiff in error was not [fol. 487] deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

V

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163, of the Revised Statutes of the State of Kansas for the year 1923, which by its terms created a conclusive presumption of knowledge against said plaintiff in error, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VI

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent, or in failing circumstances at the time of the reception of the deposit charged to have been received, prima facie evidence of the assent of the plaintiff in error, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VII

Plaintiff in error contends that the evidence in said cause fails to show that he knew the said Butler County State

Bank was insolvent at the time in question, and fails to show that said Butler County State Bank was insolvent at the time in question, and that the evidence in this cause fails to show that the plaintiff in error assented to the reception of the deposits in question.

VIII

Said plaintiff in error further states that he thinks it necessary for the consideration of the above points that all of the record be printed.

L. J. Bond, J. B. McKay, Attorneys for plaintiff in error.

[fols. 488 & 489] Received a copy of the above statement the 29th day of July, 1924.

C. L. Harris as executor of the estate of T. A. Kramer, deceased.

L. D. Hadley, A. B. Ewing, C. L. King, defendants in error. John J. Jones, B. R. Leydig, Attorneys for G. L. Ramsey, Defendant in Error.

[fol. 490] [File endorsement omitted.]

[fol. 491] In Supreme Court of the United States October Term, 1927

No. 414

Statement of Points on Which Plaintiff in Error Intends to Rely—Filed July 29, 1927

I

The plaintiff in error, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, contends that the above entitled cause is one in which the defendant in error, G. L. Ramsey, a depositor in the Butler County State Bank, of Butler County, Kansas, sought to recover from said plaintiff in error a sum of money, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged

violation of said statutes by said plaintiff in error's decedent, T. A. Kramer, while a director of said Butler County State Bank.

II

The plaintiff in error contends that in the above entitled cause, in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowl- [fol. 492] edge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of such officer, agent or manager of such banking institution to examine into the affairs of the same, and if possible know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this act shall be individually responsible for such deposits so received, and all such debts so contracted: Provided, any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of said liabilities."

was drawn in question by said plaintiff in error on the ground of said statute's being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute, and that in the trial court and the Supreme Court of the State of Kansas, the validity of Section 9-164, of the revised Statutes of the State of Kansas for the year 1923, to-wit:

"In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents and managers of any such banking institution, charged

with having so assented to the reception of such deposit; or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith."

was drawn in question by said plaintiff in error on the ground of said statute's being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute.

[fol. 493]

III

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

IV

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-164 of the Revised Statutes

of the State of Kansas, said plaintiff was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law; and was not denied the equal protection of the law.

V

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of Kansas, as interpreted by said Court, did not deny to [fol. 494] said plaintiff in error the equal protection of the law in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make an examination into the affairs of said Butler County State Bank during the time in question in said cause; and that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, which provide that if an officer or a director of a bank does not examine into the affairs of the bank, he shall be held to have had knowledge of the condition of the bank, were not in violation of the Fourteenth Amendment to the Constitution of the United States, and did not, as interpreted by the Supreme Court of the State of Kansas, deprive said plaintiff in error of property without due process of law, when the circumstances were that, during the time in question, it was impossible for plaintiff in error's decedent, T. A. Kramer, a director in said bank, to make an examination of said bank.

VI

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163 of the Revised Statutes of the State of Kansas for 1923, which by its terms created a conclusive presumption of knowledge against said plaintiff in error's decedent, T. A. Kramer, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VII

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said section 9-164 of the Revised Statutes of the State of Kansas for the year 1923, which by its terms made the fact that the said banking institution was insol-
[fol. 495] vent, or in failing circumstances, at the time of the reception of the deposit charged to have been received prima facie evidence of the assent of the said plaintiff in error's decedent, T. A. Kramer, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VIII

Plaintiff in error contends that the Supreme Court of the State of Kansas, has erred in deciding that in this cause the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas created a conclusive presumption of knowledge, and has erred in deciding in this cause that under said provisions said plaintiff in error would not be permitted to show any reason or excuse whatsoever why his decedent, T. A. Kramer, had not made an examination into the affiairs of the said Butler County State Bank, and in so holding and deciding erred in holding and deciding that said statute as so interpreted was not in violation of the Fourteenth Amendment to the Constitution of the United States.

IX

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the fact that the plaintiff in error's decedent, T. A. Kramer, was mentally and physically incapable of examining into the affairs of the said Butler County State Bank during all the time in question in this cause would not relieve said decedent from the duty of examining into the affairs of said bank during said time.

X

Plaintiff in error contends that the evidence in said cause fails to show that his decedent, T. A. Kramer, knew the said Butler County State Bank was insolvent at the time in question, and fails to show that said Butler County State Bank was insolvent at the time in question, and [fols. 496-504] that the evidence in this cause fails to show that the plaintiff in error's decedent, T. A. Kramer, assented to the reception of the deposits in question, and that the evidence in this cause shows that during all the time in question plaintiff in error's decedent, T. A. Kramer, was mentally and physically unable to assent to the reception of said deposits or to examine into the affairs of said bank, without any fault on the part of said decedent.

XI

Said plaintiff in error further states that he thinks it necessary for the consideration of the above points, that all the record in this case be printed.

John L. Hunt, Bruce A. Campbell, Attorneys for Plaintiff in Error.

Received a copy of the above statement this 26 day of July, 1927.

John J. Jones, Attorney for G. L. Ramsey, Defendant in Error.

[fol. 505] [File endorsement omitted.]

[fol. 506] SUPREME COURT OF THE UNITED STATES

Nos. 407 to 418, October Term, 1927

ORDER CONSOLIDATING CASES AND AS TO PRINTING—October 31, 1927

On consideration of a motion of counsel for the plaintiffs in error in these cases to consolidate them all for hearing, with directions to print the whole record in two of the

cases and only so much of the record in the remaining cases as is necessary to show the difference between the cases.

It is now here ordered that the said motion be, and the same is hereby, granted, the ultimate cost of printing, of course, to await the event, and the effect of any omission to print, to be at the risk of the plaintiffs in error moving for the consolidation and the limitation of printing.

Endorsed on cover: File Nos. 32,865, 32,866 Kansas Supreme Court. Term No. 413. H. F. Ferry, plaintiff in error, vs. G. L Ramsey, C. L. King, et al. Term No. 414. C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, plaintiff in error, vs. G. L. Ramsey, C. L. King, H. F. Ferry, et al. Filed July 28th, 1927. File Nos. 32,865, 32,866.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 415

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

M. R. CHASTAIN, C. L. KING, L. D. HADLEY, ET AL.

No. 416

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

vs.

M. R. CHASTAIN, C. L. KING, H. F. FERRY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

FILED JULY 30, 1927

(32,867, 32,868)

(32,867, 32,868)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 415

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

M. R. CHASTAIN, C. L. KING, L. D. HADLEY, ET AL.

No. 416

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

vs.

M. R. CHASTAIN, C. L. KING, H. F. FERRY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

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[fols. a-c] [Captions omitted]

[fols. d-440] Minute entry of argument and submission November 5, 1926, omitted in printing.

[fols. 441-452]

IN SUPREME COURT OF KANSAS

No. 27398

M. R. Chastain, Appellant,

v.

E. F. Adams et al., Appellees

Judgment—February 12, 1927

These causes come on for decision and thereupon it is ordered and adjudged that judgment in favor of T. L. Harris as executor of the estate of T. A. Kramer deceased, be reversed and remanded with instructions to render judgment for the plaintiff, and in other respects the judgment is affirmed. It is further ordered that the defendants pay the costs of this case in this court taxed at $— and hereof let execution issue.

[fols. 453 & 454] Petition for rehearing of King and Ferry, covering one page, filed April 3, 1927, omitted from this print. It was denied and nothing more by order April 16, 1927.

[fols. 455 & 456] Petition for rehearing of C. L. Harris, covering sixty pages, filed March 10, 1927, omitted from this print. It was denied and nothing more by order April 16, 1927.

[fol. 457] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER DENYING MOTION FOR REHEARING—April 16, 1927

Now comes on for decision the motion for a rehearing of these causes; and thereupon it is ordered that said motion for a rehearing be overruled.

[fols. 458 & 459] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 460 & 460½] IN SUPREME COURT OF KANSAS

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed June 15, 1927

To the Honorable Chief Justice of the Supreme Court of the State of Kansas:

Your petitioner, H. F. Ferry, respectfully shows that on the 16th day of April, A. D. 1927, the Supreme Court of the State of Kansas, rendered a final judgment and decision against your petitioner in the above entitled cause affirming the judgment of the District Court of Butler County, Kansas, against your petitioner and in favor of M. R. Chastain, appellant and cross-appellee, and remanding said cause to the District Court of Butler County, Kansas, with instructions to carry out the judgment in favor of the said M. R. Chastain and against your petitioner, the appeal notwithstanding, all as will more fully appear by reference to the record and proceedings in said cause.

That said Supreme Court of the State of Kansas, is the highest court of the State of Kansas, in which a decision in said suit could be had, and considering himself aggrieved by said final judgment and decision of the Supreme Court of the State of Kansas, your petitioner hereby prays the

allowance of a writ of error from the said decision and judgment of the Supreme Court of the State of Kansas, to the Supreme Court of the United States, and for a citation and an order fixing the amount of bond.

And your petitioner will ever pray, etc.

L. J. Bond, Eldorado, Kansas, Attorneys for Petitioner.

[File endorsement omitted.]

[fols. 461 & 461½] IN SUPREME COURT OF KANSAS

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed June 15, 1927

To the Honorable Chief Justice of the Supreme Court of the State of Kansas:

Your petitioner, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, respectfully shows that on the 16th day of April A. D. 1927, the supreme court of the State of Kansas, rendered a final judgment and decision against your petitioner in the above entitled cause, reversing the judgment of district court of Butler County, Kansas, in your petitioner's favor and remanding said cause to said district court of Butler County, Kansas, with instructions to said court, to render judgment in favor of said appellant, M. R. Chastain, and against your petitioner, as will more fully appear by reference to the record and proceedings in said cause.

That said supreme court of the State of Kansas, is the highest court of the State of Kansas, in which a decision in said suit could be had, and considering himself aggrieved by said final judgment and decision of the supreme court of the State of Kansas, your petitioner hereby prays the allowance of a writ of error, from the said decision and judgment of the supreme court of the State of Kansas, to

the Supreme Court of the United States, and for a citation and an order fixing the amount of bond.

And your petitioner will ever pray, etc.

Bruce A. Campbell, East St Louis; Bennett R. Wheeler, S. M. Brewster, John L. H[illegible], Topeka, Kans.; C. L. Hunt, Eldorado Kans., Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 462] [File endorsement omitted]

IN SUPREME COURT OF KANSAS

[Title omitted]

ASSIGNMENTS OF ERROR—Filed June 15, 1927

Now comes the appellant, H. F. Ferry, and in connection with his petition for a writ of error and as an assignment of errors, says:

That during all the time mentioned in the above entitled cause, he was a citizen of the State of Kansas, and a citizen of the United States of America; that the above entitled cause is one in which the appellee, M. R. Chastain, sought to recover from said appellant, the sum of $1,429.94 with interest, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said appellant while a director of the Butler County State Bank, a banking corporation, organized and doing business under the laws of the State of Kansas, and in Butler County, Kansas.

Said appellant says, that in the above entitled cause in the trial court, being the District Court of Butler County, Kansas, and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"It shall be unlawful for any president, director, manager, cashier or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circum-

stances; and it is hereby made the duty of every such officer, agent, or manager of such banking institution to examine into the affairs of the same and if possible to know its condition. And upon failure of any such person to discharge such duties, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received and all such debts so [fol. 463] contracted: Provided, any director who may have paid more than his share of the liabilities mentioned in this section, may have the proper remedy at law against such other persons as shall not have paid their full share of liabilities."

was drawn in question by said appellant on the ground that said statute in question was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity and constitutionality of said statute.

And in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"In all suits brought for the recovery of the amount of any deposit received or debts so created, all officers, agents or managers of any such banking institution, charged with having so assented to the reception of such deposit or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposits charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposits or creation of such debts on the part of such officers, agent or manager so charged therewith."

was drawn in question by said appellant on the ground of said statute being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

And said appellant respectfully says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Kansas, in the above entitled cause, there is manifest error in this, to wit:

First. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourth Amendment to the Constitution of the United States.

Second. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-164 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Third. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, said appellant was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Sec-
[fols. 464 & 464½] tion 9-164 of the Revised Statutes of the State of Kansas, said appellant was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the said appellant was not deprived of property without due process of law.

Sixth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, the said appellant was not deprived of property without due process of law.

Seventh. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Sec-

tion 9-163 of the Revised Statutes of the State of Kansas, the appellant was not denied equal protection of the law.

Eighth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the appellant was not denied equal protection of the law.

For which errors the said appellant, H. F. Ferry, prays that said judgment of the Supreme Court of the State of Kansas, be reversed and a judgment be rendered in favor of said appellant and for costs.

L. J. Bond, Eldorado, Kan., Attorneys for H. F. Ferry.

[fol. 465] [File endorsement omitted]

IN SUPREME COURT OF KANSAS

[Title omitted]

ASSIGNMENTS OF ERROR—Filed June 15, 1927

Now comes the appellee, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, and in connection with his petition for a writ of error, and as an assignment of errors, says:

That he is now and during all the time mentioned in the above entitled cause, was a citizen of the States of Kansas, and a citizen of the United States of America, as was also during his life time the said T. A. Kramer; that the above entitled cause is one in which the appellant M. R. Chastain sought to recover from said appellee $1,429.94 with interest, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out on account of the alleged, violation of said statutes by said appellee's decedent, T. A. Kramer, while a director of the Butler County State Bank, a banking corporation, organized and doing business under the laws of the State of Kansas, and in Butler County, Kansas.

Said appellee says that in the above entitled cause in the trial court, being the District Court of Butler County, Kan-

sas, and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"It shall be unlawful for any president, director, manager, cashier or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same and is possible, to know its condition. And upon failure of any such person to discharge such duties, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank or that it was in failing circumstances. Every person violating the provisions of this section, shall be individually responsible [fol. 466] for such deposit so received, and all such debts so contracted: Provided, any director who may have paid more than his share of the liabilities mentioned in this section, may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities."

was drawn in question by said appellee on the ground that said statute in question was repugnant to the Constitution of the United States and the decision of the Supreme Court of the State of Kansas, was in favor of the validity and constitutionality of said statute.

And in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas for the year 1923, to wit:

"In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents or managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge

and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith."

was drawn in question by said appellee on the ground of said statute being repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

And said appellee respectfully says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Kansas, in the above entitled cause, there is manifest error in this, to wit:

First. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-163, Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Second. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-164 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fol. 467] Third. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 Revised Statutes of the State of Kansas, said appellee was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, said appellee was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth. The Supreme court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163, Revised Statutes of the State of Kansas, the said appellee was not deprived of property without due process of law.

Sixth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 Revised Statutes of the State of Kansas, the said appellee was not deprived of property without due process of law.

Seventh. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, did not deny to said appellee equal protection of the law.

Eighth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-164 Revised Statutes of the State of Kansas, did not deny to said appellee equal protection of the law.

Ninth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, as interpreted by the Supreme Court of the State of Kansas, did not deny to said appellee equal protection of the law, in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make examination into the affairs of the said Butler County State Bank, during the time in question in said cause.

Tenth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, which provide that if an officer or director of a bank does not examine into the affairs of the bank, he shall be held to have knowledge of the condition of the bank were not in violation of the Fourteenth Amendment to the Constitution of the United States, and did not, as interpreted by said court, deprive appellee of property without due process of law, when the circumstances were that during the time in question it was impossible for said appellee's decedent T. A. Kramer, a director of said bank to make an examination of said bank.

[fols. 468 & 468½] Eleventh. The Supreme Court of the State of Kansas, erred in holding and deciding, that the provisions of said section 9-163 Revised Statutes of the State of Kansas, which by its terms created a conclusive

presumption of knowledge against said appellee's decedent, T. A. Kramer, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

Twelfth. The Supreme Court of the State of Kansas, erred in holding and deciding, that the provisions of said Section 9-164, Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent or in failing circumstances at the time of the reception of the deposits charged to have been received, prima facie evidence of the assent of said appellee's decedent, T. A. Kramer, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

Thirteenth. The Supreme Court of the State of Kansas has held and decided herein, that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, created a conslusive presumption of knowledge and has held and decided herein that under said provisions said appellee would not be permitted to show any reason or excuse whatsoever, why his decedent, T. A. Kramer, had not made an examination into the affairs of the said Butler County State Bank, and in so holding and deciding, erred in holding and deciding that said statute as so interpreted was not in violation of the Fourteenth Amendment to the Constitution of the United States.

For which errors the said appellee, C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, prays that said judgment of the Supreme Court of the State of Kansas, be reversed and a judgment be rendered in favor of said appellee and for costs.

C. L. Harris, El Dorado, Kans.; Bruce A Campbell, East St. Louis; Bennett R. Wheeler, S. M. Brewster, John L. Hunt, Topeka, Kans., Attorneys for C. L. Harris, Executor of the Last Will and Testament of T. A. Kramer, Deceased.

[fols. 469-469½] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER ALLOWING WRIT OF ERROR—Filed June 15, 1927

The above entitled matter coming on to be heard upon the petition of H. F. Ferry, appellant therein, for writ of error from the Supreme Court of the United States, to the Supreme Court of the State of Kansas, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the question presented by the record in said matter—

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[File endorsement omitted.]

[fols. 470 & 470½] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER ALLOWING WRIT OF ERROR—Filed June 15, 1927

The above entitled matter coming on to be heard, upon the petition of C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, therein, for writ of error from the Supreme Court of the United States, to the Supreme Court of the State of Kansas and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter—

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[File endorsement omitted.]

[fols. 471 & 471½] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER FIXING BOND

Now on this 15th day of June 1927, came on to be heard the application of H. F. Ferry, appellant, for an order fixing the amount of the bond for costs on appeal to the Supreme Court of the United States, in the above entitled action, and the court being fully informed in the premises, doth fix the amount of said bond for costs at One Thousand Dollars ($1,000.00) conditioned that the said H. F. Ferry, shall pay all costs that may accrue in said action, to the parties to this action, or to the officers of this court, or to the officers of the Supreme Court of the United States or any other person, in case he shall be adjudged to pay them; or in case the same cannot be collected from the other parties to this action, if judgment be obtained against them, then that the said H. F. Ferry will pay all such costs.

Said bond to be approved by the Clerk of said Court.

W. A. Johnston, Chief Justice.

[fols. 472 & 472½] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER FIXING BOND

Now on this 15th day of June 1927, came on to be heard the application of C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, for an order fixing the amount of the bond for costs on appeal to the Supreme Court of the United States in the above entitled action, and the court being fully informed in the premises, doth fix the amount of said bond for costs at One Thousand Dollars ($1,000.00), conditioned that the said C. L. Harris, as such executor shall pay all costs that may accrue in said action, to the parties to this action, or to the officers of this court or to the officers of the Supreme Court of the United States or any other persons, in case he shall be adjudged to pay them; or in case the same cannot be

collected from the other parties to this action, if judgment be obtained against them, then that the said C. L. Harris, as such executor, will pay all such costs.

Said bond to be approved by the Clerk of said Court.

W. A. Johnston, Chief Justice.

[fols. 473 & 473½] In Supreme Court of Kansas

Writ of Error—Filed June 15, 1927

The United States of America, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record, proceedings and judgment in a cause lately pending in the Supreme Court of the State of Kansas, being the highest court of the said State, in which a decision in the cause could be had between M. R. Chastain, appellant and cross-appellee, vs. E. F. Adams, appellee, and C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, and C. L. King, H. F. Ferry and L. D. Hadley, cross-appellants, wherein was drawn in question the validity of certain statutes of the said State of Kansas, on the ground of their being repugnant to the Constitution of the United States of America, and particularly to the Fourteenth Amendment to said Constitution, and the decision was in favor of such, their validity; it appears that the said H. F. Ferry, appellant, is entitled to have the said judgment reviewed by the Supreme Court of the United States, and he having presented a petition for a writ of error, and assignments of error to that end;

And we being willing that error, if any hath occurred, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you that under your seal, distinctly and openly, you send the record, proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, D. C., within

thirty days from the date hereof, so that the said Supreme Court of the United States may examine and consider the same and may cause further to be done to correct the error therein if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness The Honorable William Howard Taft, Chief Justice of the United States, this 15th day of June, in the year of our Lord one thousand nine hundred and twenty-seven.

F. J. Campbell, Clerk of the U. S. District Court.
(Seal of District Court U. S., District of Kansas 1861.)

Allowed by W. A. Johnston, Chief Justice.

[File endorsement omitted.]

[fol. 474 & 474½] In Supreme Court of Kansas

Writ of Error—Filed June 15, 1927

The United States of America, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record, proceedings and judgment in a cause lately pending in the Supreme Court of the State of Kansas, being the highest court of the said State, in which a decision in the cause could be had, between M. R. Chastain, appellant and cross appellee, vs. E. F. Adams, appellee, and C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, and C. L. King, H. F. Ferry and L. D. Hadley, cross-appellants, wherein was drawn in question the validity of certain statutes of the said State of Kansas, on the ground of their being repugnant to the Constitution of the United States of America, and particularly to the Fourteenth Amendment to said Constitution, and the decision was in favor of such, their validity; it appears that the said C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, is entitled to have the said judgment, reviewed by the Su-

preme Court of the United States, and he having presented a petition for a writ of error, and assignments of error to that end;

And we being willing that error, if any hath occurred, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you that under your seal, distinctly and openly, you send the record, proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof, so that the said Supreme Court of the United States may examine and consider the same and may cause further to be done to correct the error therein, if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness The Honorable William Howard Taft, Chief Justice of the United States, the 15th day of June, in the year of our Lord one thousand nine hundred and twenty-seven.

F. J. Campbell, Clerk of the U. S. Dist. Court. (Seal of District Court U. S., District of Kansas, 1861.)

Allowed by W. A. Johnston, Chief Justice.

[File endorsement omitted.]

[fols. 475-476½] Bonds on writs of error for $1,000.00 each, approved and filed June 15, 1927, omitted in printing.

[fols. 477-480½] Citations in usual form, showing service on C. L. Harris et al., filed June 21, 1927, omitted in printing.

[fol. 481] Certificate of lodgment omitted in printing.

[fol. 482] Return to writ of error omitted in printing.

[fols. 483-489] Orders enlarging time omitted in printing.

[fol. 490] IN THE SUPREME COURT OF THE UNITED STATES

No. 415

STATEMENT OF POINTS TO BE RELIED UPON—Filed August 4, 1927

I

The plaintiff in error, H. F. Ferry, contends that the above entitled cause is one in which the defendant in error, M. R. Chastain, a depositor in the Butler County State Bank, of Butler County, Kansas, sought to recover from said plaintiff in error a sum of money, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said plaintiff in error, while a director of said Butler County State Bank.

II

The plaintiff in error contends that in the above entitled cause, in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"It shall be unlawful for any president, director, manager, cashier, or any other officer of any banking institution to assent to the reception of any deposits or the creation of debts by such banking institution after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and if possible know its condition. And upon the failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually re-

sponsible for such deposits so received, and all such debts so contracted: Provided, any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other [fol. 491] persons as shall not have paid their full share of said liabilities"

was drawn in question by said plaintiff in error on the ground that said statute was repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute, and that in the trial court and the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"In all the suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents and managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge on the part of such officer, agent or manager so charged therewith"

was drawn in question by the plaintiff in error on the ground that the statute was repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

III

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, were valid, and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-163, of the Revised Statutes of the

State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not denied the equal protection of the law.

IV

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164, of the Revised Statutes of the State of Kansas, for the year 1923, were valid and were not in conflict with and in violation of the provisions [fol. 492] of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

V

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, which by its terms created a conclusive presumption of knowledge against said plaintiff in error, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VI

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent, or in failing circumstances at the time of the reception of the deposit charged to have been received prima facie evidence of the assent of the plaintiff in error to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VII

Plaintiff in error contends that the evidence in said cause fails to show that he knew the said Butler County State Bank was insolvent at the time in question, and fails to show that said Butler County State Bank was insolvent at the time in question, and that the evidence in this cause fails to show that the plaintiff in error assented to the reception of the deposits in question.

VIII

Said plaintiff in error further states that he thinks its necessary for the consideration of the above points that all of the record be printed.

[fols. 493 & 494] L. J. Bond, J. B. McKay, Attorneys for plaintiff in error.

Received a copy of the above statement the 29 day of July, 1927.

C. L. Harris, as Executor of the Estate of T. A. Kramer, Deceased; L. D. Hadley, C. L. King, Defendants in Error. John J. Jones, B. R. Leydig, Attorneys for M. R. Chastain, Defendant in Error.

[fol. 495] [File endorsement omitted.]

[fol. 496] In Supreme Court of the United States

No. 416

Statement of Points on Which Plaintiff in Error Intends to Rely—Filed July 29, 1927

I

The plaintiff in error, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, contends that the above entitled cause is one in which the defendant in error, M. R. Chastain, a depositor in the Butler County State Bank, of Butler County, Kansas, sought to recover from said plaintiff in error a sum of money, under

the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said plaintiff in error's decedent, T. A. Kramer, while a director of said Butler County State Bank.

II

The plaintiff in error contends that in the above entitled cause, in the trial court and in the Supreme Court of the State of Kansas, the validity of Section, 9-163 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances, and it is hereby made the duty of every such officer, [fol. 497] "agent, or manager of such banking institution to examine into the affairs of the same, and if possible know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted: Provided: any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of said liabilities."

was drawn in question by the said plaintiff in error on the ground of said statute's being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute, and that in the trial court and in the Supreme Court of the State of Kansas, the validity of section 9-164 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"In all suits brought for the recovery of the amount of any deposits received or debt so created all officers, agents,

or managers of any such banking institution, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit so charged to have been received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent, or manager so charged therewith."

was drawn in question by said plaintiff in error on the ground of said statute's being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

III

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said section 9-163, of the Revised Statutes of the State of Kansas, for the year 1923, were valid, and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the [fol. 498] United States and in holding and deciding that by the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

IV

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-164 of the Revised Statutes of

the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

V

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163 of the Revised Statutes of the state of Kansas, as interpreted by said Court did not deny to said plaintiff in error the equal protection of the law in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make an examination into the affairs of the said Butler County State Bank during the time in question in said cause; and that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, which provide that if an officer or director of a bank does not examine into the affairs of the bank, he shall be held to have had knowledge of the condition of the bank, were not in [fol. 499] violation of the Fourteenth Amendment to the Constitution of the United States, and did not, as interpreted by the Supreme Court of the State of Kansas, deprive said plaintiff in error of property without due process of law, when the circumstances were that, during the time in question, it was impossible for plaintiff in error's decedent, T. A. Kramer, a director of said bank, to make an examination of said bank.

VI

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the state of Kansas for the year 1923, which by its terms created a conclusive presumption of knowledge against said plaintiff in error's decedent, T. A. Kramer, were not in violation of the Fourteenth Amendment of the Constitution of the United States.

VII

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent, or in failing circumstances, at the time of the reception of the deposit so charged to have been received prima facie evidence of the assent of the said plaintiff in error's decedent, T. A. Kramer, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VIII

Plaintiff in error contends tha- the Supreme Court of the State of Kansas, has erred in deciding in this cause that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas, created a conc*ul*sive presumption of knowledge, and has erred in deciding in this cause that [fol. 500] under said provisions said plaintiff in error would not be permitted to show any reason or excuse whatsoever why his decedent, T. A. Kramer, had not made an examination into the affairs of the said Butler County State Bank, and in so holding and deciding erred in holding and deciding that said statute as so interpreted was not in violation of the Fourteenth Amendment to the Constitution of the United States.

IX

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the fact that the plaintiff in error's decedent, T. A. Kramer was mentally and physically incapable of examining into the affairs of the said Butler County State Bank during all the time in question in this cause would not relieve said decendent from the duty of examining into the affairs of said bank during said time.

X

Plaintiff in error contends that the evidence in said cause fails to show that his decedent, T. A. Kramer, knew the

said Butler County State Bank was insolvent at the time in question, and fails to show that said Butler County State Bank was insolvent at the time in question, and that the evidence in this cause fails to show that *that* the plaintiff in error's decedent, T. A. Kramer, assented to the reception of the deposits in question, and that the evidence in this cause shows that during all the time in question plaintiff in error's decedent, T. A. Kramer, was mentally and physically unable to assent to the reception of said deposits or to examine into the affairs of said bank, without any fault on the part of the decedent.

[fols. 501-509] XI

Said plaintiff in error further states that he thinks it necessary, for the consideration of the above points, that all of the record in this cause be printed.

John L. Hunt, Bruce A. Campbell, Attorneys for Plaintiff in Error.

Dated at —— this — day of July, 1927.

Received a copy of the above statement this 26th day of July, 1927.

John J. Jones, Attorney for M. R. Chastain, Defendant in Error.

[fol. 510] [File endorsement omitted.]

[fol. 511] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1927

Nos. 407 to 418

ORDER CONSOLIDATING CASES AND AS TO PRINTING—October 31, 1927

On consideration of a motion of counsel for the plaintiffs in error in these cases to consolidate them all for hearing, with directions to print the whole record in two of the cases and only so much of the record in the remaining cases as is necessary to show the difference between the cases,

It is now here ordered that the said motion be, and the same is hereby, granted, the ultimate cost of printing, of course, to await the event, and the effect of any omission to print, to be at the risk of the plaintiffs in error moving for the consolidation and the limitation of printing.

Endorsed on cover: File No. 32,867, 32,868. Kansas Supreme Court. Term No. 415. H. F. Ferry, plaintiff in error, vs. M. R. Chastain, C. L. King, L. D. Hadley et al. Term No. 416. C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, plaintiff in error, vs. M. R. Chastain, C. L. King, H. F. Ferry et al. Filed July 28, 1927. File Nos. 32,867, 32,868.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 417

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

A. L. LLOYD, C. L. KING, AND L. D. HADLEY

No. 418

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

vs.

A. L. LLOYD, C. L. KING, H. F. FERRY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

FILED JULY 28, 1927

(32,869, 32,870)

(32,869, 32,870)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 417

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

A. L. LLOYD, C. L. KING, AND L. D. HADLEY

No. 418

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

vs.

A. L. LLOYD, C. L. KING, H. F. FERRY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

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IN SUPREME COURT OF KANSAS

[fols. 441-444]

No. 27396

A. E. Lloyd, Appellant,

v.

E. F. Adams et al., Appellees

Judgment—February 12, 1927

These causes come on for decision and thereupon it is ordered and adjudged that Judgment in favor of T. L. Harris as executor of the estate of T. A. Kramer deceased, be reversed and remanded with instructions to render judgment for the plaintiff, and in other respects the judgment is affirmed. It is further ordered that the defendants pay the costs of this case in this court taxed at $— and hereof let execution issue.

[fols. 445 & 446] Petition for rehearing, covering 1 page, filed April 3, 1927, omitted from this print. It was denied and nothing more by order April 16, 1927.

[fols. 447 & 448] Petition for rehearing, covering 60 pages, filed Mar. 10, 1927, omitted from this print. It was denied and nothing more by order April 16, 1927.

[fol. 449] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER DENYING REHEARING—April 16, 1927

Now comes on for decision the motion for a rehearing of these causes; and thereupon it is ordered that said motion for a rehearing be overruled.

[fols. 450 & 451] Clerk's certificate to foregoing Transcript omitted in printing.

[fols. 452 & 452½] IN SUPREME COURT OF KANSAS

[Title omitted]

[File endorsement omitted.]

PETITION FOR WRIT OF ERROR—Filed June 15, 1927

To the Honorable Chief Justice of the Supreme Court of the State of Kansas:

Your petitioner, H. F. Ferry, respectfully shows that on the 16th day of April A. D., 1927, the Supreme Court of the State of Kansas, rendered a final judgment and decision against your petitioner in the above entitled cause, affirming the judgment of the District Court of Butler County, Kansas, against your petitioner and in favor of A. E. Lloyd, appellant and cross-appellee, and remanding said cause to the District Court of Butler County, Kansas, with instruction to carry out the judgment in favor of the said A. E. Lloyd and against your petitioner, the appeal notwithstanding, all as will more fully appear by reference to the record and proceedings in said cause.

That said Supreme Court of the State of Kansas, is the highest court of the State of Kansas, in which a decision in said suit could be had, and considering himself aggrieved by said final decision of the Supreme Court of the State of Kansas, your petitioner hereby prays the allowance of a writ of error from the said decision and judgment

of the Supreme Court of the State of Kansas, to the Supreme Court of the United States, and for a citation and an order fixing the amount of bond.

And your petitioner will ever pray, etc.

L. J. Bond, El Dorado, Kans., Attorneys for petitioner.

[fols. 453 & 453½] In Supreme Court of Kansas

[Title omitted]

[File endorsement omitted.]

Petition for Writ of Error—Filed June 15, 1927

To the Honorable Chief Justice of the Supreme Court of the State of Kansas:

Your petitioner, C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, respectfully shows that on the 16th day of April, A. D., 1927, the supreme court of the State of Kansas, rendered a final judgment and decision against your petitioner in the above entitled cause, reversing the judgment of the District Court of Butler County, Kansas, in your petitioner's favor, and remanding said cause to said District Court of Butler County, Kansas, with instructions to render judgment in favor of said appellant A. E. Lloyd, and against your petitioner, as will more fully appear by reference to the record and proceedings in said cause.

That said supreme court of the State of Kansas is the highest court of the State of Kansas, in which a decision in said suit could be had, and considering himself aggrieved by said final judgment and decision of the Supreme court of the State of Kansas, your petitioner hereby prays the allowance of a writ of error from the said decision and judgment of the supreme court of the State of Kansas, to the Supreme Court of the United States, and for a citation and an order fixing the amount of bond.

And your petitioner will ever pray, etc.

C. L. Harris, El Dorado, Kans.; Bruce A. Compbell, East St. Louis; Bennett R. Wheeler, S. M. Brewster, John L. Hunt, Topeka, Kans., Attorneys for petitioner.

[fol. 454] IN SUPREME COURT OF KANSAS

[Title omitted]

[File endorsement omitted.]

ASSIGNMENTS OF ERROR—Filed June 15, 1927

Now comes the appellant, H. F. Ferry, and in connection with his petition for a writ of error and as an assignment of errors, says:

That during all the time mentioned in the above entitled cause, he was a citizen of the State of Kansas, and a citizen of the United States of America; that the above entitled cause is one in which the appellee, A. E. Lloyd, sought to recover from said appellant, the sum of $915.77 with interest, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said appellant while a director of the Butler County State Bank, a banking corporation organized and doing business under the laws of the State of Kansas, and in Butler County, Kansas.

Said appellant says, that in the above entitled cause in the trial court, being the District Court of Butler County, Kansas, and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstanes; and it is hereby made the duty of every such officer, agent, or manager of such banking institution to examine into the affairs of the same and if possible to know its condition. And upon failure of any such person to discharge such duties, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received and all such debts [fol. 455] so contracted: Provided, any director who may

have paid more than his share of the liabilities mentioned in this section, may have the proper remedy at law against such other person as shall not have paid their full share of liabilities."

was drawn in question by said appellant on the ground that said statute in question was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity and constitutionality of said statute.

And in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"In all suits brought for the recovery of the amount of any deposit received or debts so created, all officers, agents or managers of any such banking institution, charged with having so assented to the reception of such deposit or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposits charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposits or creation of such debts on the part of such officers, agent or manager so charged therewith."

was drawn in question by said appellant on the ground of said statute being repugnant to the Constitution *to* the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

And said appellant respectfully says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Kansas, in the above entitled cause, there is manifest error in this, to wit:

First: The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-163 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Second: The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-164 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fols. 456 & 456½] Third. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, said appellant was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the povisions of Section 9-164 of the Revised Statutes of the State of Kansas, said appellant was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, the said appellant was not deprived of property without due process of law.

Sixth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the said appellant was not deprived of property without due process of law.

Seventh. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, the appellant was not denied equal protection of the law.

Eighth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the appellant was not denied equal protection of the law.

For which errors the said appellant H. F. Ferry, prays that said judgment of the Supreme Court of the State of

Kansas, be reverted and a judgment be rendered in favor of said appellant and for costs.

L. J. Bond, El Dorado, Kans., Attorneys for H. F. Ferry.

[fol. 457] IN SUPREME COURT OF KANSAS

[Title omitted]

[File endorsement omitted.]

ASSIGNMENTS OF ERROR—Filed June 15, 1927

Now comes the appellee, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, and in connection with his petition for a writ of error and as assignment of errors, says:

That he is now and during all the time mentioned in the above entitled cause, was a citizen of the State of Kansas, and a citizen of the United States of America, as was also during his life time the said T. A. Kramer; that the above entitled cause is one in which the appellant, A. E. Lloyd, sought to recover from said appellee the sum of $915.77 with interest, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said appellee's decedent, T. A. Kramer, while a director of the Butler County State Bank, a banking corporation organized and doing business under the laws of the State of Kansas, and in Butler County, Kansas.

Said appellee says that in the above entitled cause in the trial court, being the District Court of Butler County, Kansas, and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"It shall be unlawful for any president, director, manager, cashier or other officer of any banking institution, to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer,

agent or manager of such banking institution, to examine into the affairs of same, and if possible, to know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank or that [fol. 458] it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposit so received and all such debts so contracted: Provided, any director who may have paid more than his share of the liabilities mentioned in this section, may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities."

was drawn in question by said appellee on the ground that said statute in question was repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity and constitutionality of said statute.

And in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents or managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith."

was drawn in question by said appellee on the ground of said statute being repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

And said appellee respectfully says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Kansas, in the above entitled cause, there is manifest error in this, to wit:

First. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Second. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fol. 459] Third. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, said appellee was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth. The Supreme court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, said appellee was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, the said appellee was not deprived of property without due process of law.

Sixth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the said appellee was not deprived of property without due process of law.

Seventh. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said

Section 9-163 of the Revised Statutes of the State of Kansas, did not deny to said appellee equal protection of the law.

Eighth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, did not deny to said appellee equal protection of the law.

Ninth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, as interpreted by the Supreme Court of the State of Kansas, did not deny to said appellee equal protection of the law, in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make examination into the affairs of the said Butler County State Bank, during the time in question in said cause.

Tenth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, which provide that if an officer or director of a bank does not examine into the affairs of the bank, he shall be held to have knowle-ge of the condition of the bank, were not in violation of the Fourteenth Amendment to the Constitution of the United States, and did not, as interpreted by said court, deprive appellee of property without due process of law, when the circumstances were that during the time in question it was impossible for said appellee's decedent, T. A. Kramer, a director of said bank to make an examination of said bank.

[fols. 460 & 460a] Eleventh: The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said section 9-163 Revised Statutes of the State of Kansas, which by its terms created a conclusive presumption of knowledge against said appellee's decedent, T. A. Kramer, were not in violation of the Fourteenth Amendent to the Constitution of the United States.

Twelfth: The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-164 Revised Statutes of the State of Kansas,

which by its terms made the fact that the said banking institution was insolvent or in failing circumstances at the time of the reception of the deposits charged to have been received, prima facie evidence of the assent of said appellee's decedent, T. A. Kramer, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

Thirteenth: The Supreme Court of the State of Kansas, has held and decided herein, that the provisions of said section 9-163 Revised Statutes of the State of Kansas, created a conclusive presumption of knowledge and has held and decided herein that under said provisions said appellee would not be permitted to show any reason or excuse whatsoever, why his decedent, T. A. Kramer, had not made an examination into the affairs of the said Butler County State Bank, and in so holding and deciding, erred in holding and deciding that said statute as so interpreted was not in violation of the Fourteenth Amendment to the Constitution of the United States.

For which errors the said appellee, C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, prays that said judgment of the Supreme Court of the State of Kansas, be reversed and a judgment be rendered in favor of said appellee and for costs.

Bruce A. Campbell, East St. Louis, Bennett R. Wheeler, S. M. Brewster, John L. Hunt, Topeka, Kansas, Attorneys for C. L. Harris, Executor of the last will and testament of T. A. Kramer, deceased.

[fols. 460b & c] In Supreme Court of Kansas

[Title omitted]

[File endorsement omitted.]

Order Allowing Writ of Error—Filed June 15, 1927

The above entitled matter coming on to be heard upon the petition of H. F. Ferry, appellant therein, for writ of error from the Supreme Court of the United States, to the Supreme Court of the State of Kanasas, and upon examination

of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter:

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[fol. 461 & 461½] In Supreme Court of Kansas

[Title omitted]

[File endorsement omitted.]

Order Allowing Writ of Error—Filed June 15, 1927

The above entitled matter coming on to be heard, upon the petition of C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee therein, for writ of error from the Supreme Court of the United States, to the Supreme Court of the State of Kansas, and upon examination of said petition and the record in said matter, and desiring to give the petition an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter.

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[fols. 462 & 462½] In Supreme Court of Kansas

[Title omitted]

Order Fixing Bond

Now on this 15th day of June 1927, came on to be heard the application of H. F. Ferry, appellant, for an order fix-

ing the amount of the bond for costs on appeal to the Supreme Court of the United States, in the above entitled action, and the court being fully informed in the premises, doth fix the amount of said bond for costs at One Thousand Dollars ($1,000.00) conditioned that the said H. F. Ferry, shall pay all costs that may accrue in said action, to the parties to this action, or to the officers of this court, or to the officers of the Supreme Court of the United States or any other person, in case he shall be adjudged to pay them, or in case the same cannot be collected from the other parties to this action, if judgment be obtained against them, then that the said H. F. Ferry will pay all such costs.

Said bond to be approved by the clerk of said court.

W. A. Johnston, Chief Justice.

[fols. 463 & 463½] In Supreme Court of Kansas

[Title omitted]

Order Fixing Bond

Now on this 15th day of June, 1927, came on to be heard the application of C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, for an order fixing the amount of the bond for costs on appeal to the Supreme Court of the United States in the above entitled action, and the court being fully informed in the premises, doth fix the amount of said bond for costs at One Thousand Dollars ($1,000.00), conditioned that the said C. L. Harris, as such executor, shall pay all costs that may accrue in said action, to the parties to this action, or to the officers of this court or to the officers of the Supreme Court of the United States or any other yersons, in case he shall be adjudged to pay them; or in case the same cannot be collected from the other parties to this action, if judgment be obtained against them, then that the said C. L. Harris, as such executor, will pay all such costs.

Said bond to be approved by clerk of said court.

W. A. Johnston, Chief Justice.

[fols. 464 & 464½] IN SUPREME COURT OF KANSAS

WRIT OF ERROR—Filed June 15, 1927

[File endorsement omitted.]

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greetings:

Because in the record, proceedings and judgment in a cause lately pending in the Supreme Court of the State of Kansas, being the highest court of the said State, in which a decision in the cause could be had, between A. E. Lloyd, appellant and appellee, vs. C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, and E. F. Adams, appellees, and C. L. King, H. F. Ferry and L. D. Hadley, cross-appellants, wherein was drawn in question the validity of certain statutes of the said State of Kansas, on the ground of their being repugnant to the Constitution of the United States of America, and particularly to the Fourteenth Amendment to said Constitution, and the decision was in favor of such, their validity; it appears that the said H. F. Ferry, appellant, is entitled to have the said judgment reviewed by the Supreme Court of the United States, and he having presented a petition for a writ of error, and assignments of error to that end;

And we being willing that error, if any hath occurred, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you that under your seal, distinc-ly and openly, you send the record, proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof, so that the said Supreme Court of the United States may examine and consider the same and may cause further to be done to correct the error therein if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this 15th day of June, in the year of our Lord one thousand nine hundred and twenty-seven.

F. C. Campbell, Clerk of the U. S. District Court.

(Seal of District Court U. S., District of Kansas.)

Allowed by W. A. Johnston, Chief Justice.

[fol. 465 & 465½] In Supreme Court of Kansas

Writ of Error—Filed June 15, 1927

[File endorsement omitted.]

The United States of America, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record, proceedings and judgment in a cause lately pending in the Supreme Court of the State of Kansas, being the highest court of the said State, in which a decision in the cause could be had, between A. E. Lloyd, appellant and appellee, vs. C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, and E. F. Adams, appellees and C. L. King, H. F. Ferry and L. D. Hadley, cross-appellants, wherein was drawn in question the validity of certain statutes of the said State of Kansas, on the ground of their being repugnant to the Constitution of the United States of America, and particularly to the Fourteenth Amendment to said Constitution, and the decision was in favor of such, their validity; it appears that the said C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, is entitled to have the said judgment, reviewed by the Supreme Court of the United States, and he having presented a petition for a writ of error, and assignments of error to that end:

And we being willing that error, if any hath occurred, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you that under your seal, distinctly and openly, you send the record,

proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof, so that the said Supreme Court of the United States may examine and consider the same and may cause further to be done to correct the error therein, if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the 15th day of June, in the year of our Lord one thousand nine hundred and twenty-seven.

F. C. Campbell, Clerk of the U. S. Dist. Court.
(Seal of District Court U. S., District of Kansas.)

Allowed by W. A. Johnston, Chief Justice.

[fols. 466-467½] Bonds on writs of error for $1,000.00 each approved and filed June 15, 1927, omitted in printing.
[fols. 468-471½] Citations in usual form showing service on John J. Jones et al., filed June 21, 1927, omitted in printing.

[fol. 472] Certificate of lodgment omitted in printing.

[fol. 473] Return to writ of error omitted in printing.

[fols. 474-480] Orders enlarging time omitted in printing.

[fol. 481] In Supreme Court of the United States, October Term, 1927

No. 417

Statement of Points on Which Plaintiff in Error Intends to Reply—Filed August 4, 1927

I

The plaintiff in error, H. F. Ferry, contends that the above entitled cause is one in which the defendant in error, A. E.

Lloyd, a depositor in the Butler County State Bank of Butler County, Kansas, sought to recover from said plaintiff in error a sum of money, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said plaintiff in error, while a director of said Butler County State Bank.

II

The plaintiff in error contends that in the above entitled cause, in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"It shall be unlawful for any president, director, manager, cashier, or any other officer of any banking institution to assent to the reception of any deposits or the creation of debts by such banking institution after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and if possible know its condition. And upon the failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted: Provided, any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full [fol. 482] share of said liabilities."

was drawn in question by said plaintiff in error on the ground that said statute was repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute, and that in the trial court and the Supreme Court of the State of Kansas, the validity of Section 9-164, of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"In all the suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents and managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge on the part of such officer, agent or manager so charged therewith"

was drawn in question by the plaintiff in error on the ground that the statute was repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

III

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, were valid, and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not denied the equal protection of the law.

IV

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164, of the Revised Statutes of the State of Kansas, for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution [fol. 483] of the United States, and in holding and deciding that by the provisions of said section 9-164 of the Revised

Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

V

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, which by its terms created a conclusive presumption of knowledge against said plaintiff in error, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VI

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent, or in failing circumstances at the time of the reception of the deposit charged to have been received prima facie evidence of the assent of the plaintiff in error, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VII

Plaintiff in error contends that the evidence in said cause fails to show that he knew the said Butler County State Bank was insolvent at the time in question, and fails to show that said Butler County State Bank was insolvent at the time in question, and that the evidence in this cause fails to show that the plaintiff in error assented to the reception of the deposits in question.

VIII

Said plaintiff in error further states that he thinks it necessary for the consideration of the above points that all [fols. 484 & 485] of the record be printed.

L. J. Bond, J. B. McKay, Attorneys for Plaintiff in Error.

Received a copy of the above statement the 29 day of July, 1927.

C. L. Harris, as Executor of the Estate of T. A. Kramer, Deceased. L. D. Hadley, C. L. King, Defendants in Error. John J. Jones, B. G. Leydig, Attorneys for A. E. Lloyd, Defendant in Error.

[fol. 486] [File endorsement omitted.]

[fol. 487] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1927

No. 418

STATEMENT OF POINTS ON WHICH PLAINTIFF IN ERROR INTENDS TO RELY—Filed July 29, 1927

I

The plaintiff in error, C. L. Harris, as executor of the last will and testment of T. A. Kramer, deceasd, contends that the above enitled cause is one in which the defendant in error, A. L. Lloyd, a depositor in the Butler County State Bank, of Butler County, Kansas, sought to recover from said plaintiff in error a sum of money, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said plaintiff in error's decedent, T. A. Kramer, while a director of said Butler County State Bank.

II

The plaintiff in error contends that in the above entitled cause, in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, to-wit:

"It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent, or in failing circumstances; and it is hereby made the duty of every officer,

[fol. 488] agent or manager of such banking institution to examine into the affairs of the same, and if possible know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this Section shall be individually responsible for such deposits so received, and all such debts so contracted: Provided, Any director who may have paid more than his share of the liabilities mentioned in this Section may have the proper remedy at law against such other persons as shall not have paid their full share of said liabilities."

was drawn in question by said plaintiff on error on the ground of said statute's being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute, and that in the trial court and the Supreme Court of the state of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"In all suits brought for the recovery of the amount of any deposits received or debt so created all officers, agents or managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith."

was drawn in question by said plaintiff in error on the ground of said statute's being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

III

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States; and in holding and deciding that by the provisions of said Section 9-163 of the Revised [fol. 489] Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

IV

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-164, of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

V

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of Kansas, as interpreted by said Court did not deny to said plaintiff in error the equal protection of the law in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make an examination into the affairs of the said Butler County State Bank during the time in question in said cause; and that the Supreme Court of the State of Kansas, erred in hold-

ing and deciding that the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, which provide that if an officer or director of a bank does not examine into [fol. 490] the affairs *pf* the bank, he shall be held to have had knowledge of the condition of the bank, were not in violation of the Fourteenth Amendment to the Constitution of the United States, and did not, as interpreted by the Supreme Court of the State of Kansas, deprive said plaintiff in error of property without due process of law, when the circumstances were that, during the time in question, it was impossible for plaintiff in error's decedent, T. A. Kramer, a director in said bank, to make an examination of said bank.

VI

Plaintiff in error contends that the Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the state of Kansas for the year 1923, which by its terms created a conclusive presumption of knowledge against said plaintiff in error's decedent, T. A. Kramer, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VII

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provision of said section 9-164 of the Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent, or in failing circumstances, at the time of the reception of the deposit charged to have been received, prima facie evidence of the assent of the said plaintiff in error's decedent, T. A. Kramer, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VIII

Plaintiff in error contends that the Supreme Court of the State of Kansas, has erred in deciding in this cause that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas created a conclusive presumption of knowledge, and has erred in deciding in this cause that

[fol. 491] under said provisions said plaintiff in error would not be permitted to show any reason or excuse whatsoever why his decedent, T. A. Kramer, had not made an examination into the affairs of the said Butler County State Bank, and in so holding and deciding erred in holding and deciding that said statute as so interpreted was not in conflict with nor in violation of the Fourteenth Amendment to the Constitution of the United States.

IX

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the fact that the plaintiff in error's decedent T. A. Kramer, was mentally and physically incapable of examining into the affairs of the said Butler County State Bank during all the time in question in this cause would not relieve said decedent from the duty of examining into the affairs of said bank during said time.

X

Plaintiff in error contends that the evidence in said cause fails to show that his decedent, T. A. Kramer, knew the said Butler County State Bank was insolvent at the time in question, and fails to show that said Butler County State Bank was insolvent at the time in question, and that the evidence in this cause fails to show that the plaintiff in error's decedent, T. A. Kramer, assented to the reception of the deposits in question, and that the evidence in this cause shows that during all the time in question plaintiff in error's decedent, T. A. Kramer, was mentally and physically unable to assent to the reception of said deposits or to examine into the affiairs of said bank, without any fault on the part of said decedent.

[fols. 492-500] XI

Said plaintiff in error further states that he thinks it necessary, for the consideration of the above points, that all the record in this case be printed.

John L. Hunt, Bruce A. Campbell, Attorneys for Plaintiff in Error.

Received a copy of the above statement this 26th day of July, 1927.

John J. Jones, Attorney for A. L. Lloyd, Defendant in Error.

[fol. 501] [File endorsement omitted.]

[fol. 502] SUPREME COURT OF THE UNITED STATES

Nos. 407 to 418, October Term, 1927

ORDER CONSOLIDATING CASES AND AS TO PRINTING—October 31, 1927

On consideration of a motion of counsel for the plaintiffs in error in these cases to consolidate them all for hearing, with directions to print the whole record in two of the cases and only so much of the record in the remaining cases as is necessary to show the difference between the cases,

It is now here ordered that the said motion be, and the same is hereby, granted, the ultimate cost of printing, of course, to await the event, and the effect of any omission to print, to be at the risk of the plaintiffs in error moving for the consolidation and the limitation of printing.

Endorsed on cover: File No. 32,869, 32,870. Kansas Supreme Court. Term No. 417. H. F. Ferry, Plaintiff in Error, vs. A. L. Lloyd, C. L. King and L. D. Hadley. Term No. 418. C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, Plaintiff in Error, vs. A. L. Lloyd, C. L. King, H. F. Ferry, et al. Filed July 28th 1927. File No. 32,869, 32,870.

FEB 24 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1927

H. F. Ferry, Plaintiff in Error, vs. Alice M. Ramsey, et al., Defendants in Error.	Nos. 407, 409, 411, 413, 415, 417
C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, deceased, Plaintiff in Error, vs. Alice M. Ramsey, et al., Defendants in Error.	Nos. 408, 410, 412, 414, 416, 418

BRIEF OF PLAINTIFF IN ERROR, H. F. FERRY, IN OPPOSITION TO THE MOTION TO DISMISS WRITS OF ERROR, FILED BY DEFENDANTS IN ERROR

J. B. McKAY,
L. J. BOND,
Both of El Dorado, Kansas,
Attorneys for Plaintiff in Error,
H. F. Ferry.

IN THE

Supreme Court of the United States

October Term, 1927

H. F. Ferry, Plaintiff in Error, vs. Alice M. Ramsey, C. L. King and L. D. Hadley, Defendants in Error.	No. 407
C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, deceased, Plaintiff in Error, vs. Alice M. Ramsey, C. L. King, H. F. Ferry, et al, Defendants in Error.	No. 408
H. F. Ferry, Plaintiff in Error, vs. W. O. James, C. L. King and L. D. Hadley, Defendants in Error,	No. 409
C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, deceased, Plaintiff in Error, vs. W. O. James, C. L. King, H. F. Ferry, et al., Defendants in Error.	No. 410
H. F. Ferry, Plaintiff in Error, vs. Ramsey Petroleum Company, C. L. King, et al., Defendants in Error.	No. 411
C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, deceased, Plaintiff in Error, vs. Ramsey Petroleum Company, C. L. King, et al., Defendants in Error.	No. 412

H. F. Ferry, Plaintiff in Error,

vs.

G. L. Ramsey, C. L. King, et al., Defendants in Error. — No. 413

C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, deceased, Plaintiff in Error,

vs.

G. L. Ramsey, C. L. King, H. F. Ferry, et al., Defendants in Error. — No. 414

H. F. Ferry, Plaintiff in Error,

vs.

M. R. Chastain, C. L. King, L. D. Hadley, et al., Defendants in Error. — No. 415

C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, deceased, Plaintiff in Error,

vs.

M. R. Chastain, C. L. King, L. D. Hadley, et al., Defendants in Error. — No. 416

H. F. Ferry, Plaintiff in Error,

vs.

A. L. Lloyd, C. L. King and L. D. Hadley, Defendants in Error. — No. 417

C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, deceased, Plaintiff in Error,

vs.

A. L. Lloyd, C. L. King and H. F. Ferry, et al, Defendants in Error. — No. 418

BRIEF OF PLAINTIFF IN ERROR, H. F. FERRY, IN OPPOSITION TO THE MOTION TO DISMISS WRITS OF ERROR, FILED BY DEFENDANTS IN ERROR.

The defendants in error, G. L. Ramsey, Ramsey Petroleum Company, a corporation, W. O. James, M. R. Chastain, Alice M. Ramsey and A. E. Lloyd, have filed herein their motion to dismiss the writs of error "or in the alternative, if dismissal is not proper, to affirm."

This plaintiff in error has already filed his brief on the merits and it is intended merely to supplement that brief by this one as to the questions raised by the motion to dismiss.

The motion to dismiss contains three grounds, the first two of which raise the point that the statutes, the constitutionality of which is challenged, are not in contravention of the Constitution of the United States, and that therefore no substantial Federal question is involved or raised. It is a sufficient answer to these two contentions to say that, as will appear from the brief already filed by this plaintiff in error on the merits, reference to which is hereby made, the Federal question presented requires analysis and exposition for its decision. "The Federal question presented, being one which requires analysis and exposition for its decision, is not frivolous and the motion to dismiss the writ of error is accordingly denied. Louisville & N. R. Co. v. Melton, 218 U. S. 36, 39; 54 L. Ed. 921; 47 L. R. A. (N. S.) 84; 30 Sup. Ct. Rep. 676." Milheim v. Moffat Tunnel Improvement Dist. (1924), 262 U. S. 710; 67 L. Ed. 1194; 43 Sup. Ct. Rep. 694.

The third ground raised by the motion to dismiss is that this court is without jurisdiction for want of necessary parties as plaintiff in error.

It is not deemed necessary to unduly extend this brief by discussing that proposition. A separate brief has been filed by plaintiff in error, C. L. Harris as executor of the estate of T. A. Kramer, deceased, reference to which is hereby made, wherein it is shown clearly that no joint judgments were rendered below against defendants below, but on the contrary separate judgments, some favorable and some unfavorable, were rendered as to each defendant. That being true, as we understand the rules, it was unnecessary for any to join with this plaintiff in error in obtaining a writ of error to this court and there is no want of necessary parties.

Respectfully submitted,

J. B. McKAY,
L. J. BOND,
Both of El Dorado, Kansas,
Attorneys for Plaintiff in Error,
H. F. Ferry.

FEB 24 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

H. F. FERRY, PLAINTIFF IN ERROR,
vs.
ALICE M. RAMSEY ET AL.,
DEFENDANTS IN ERROR.

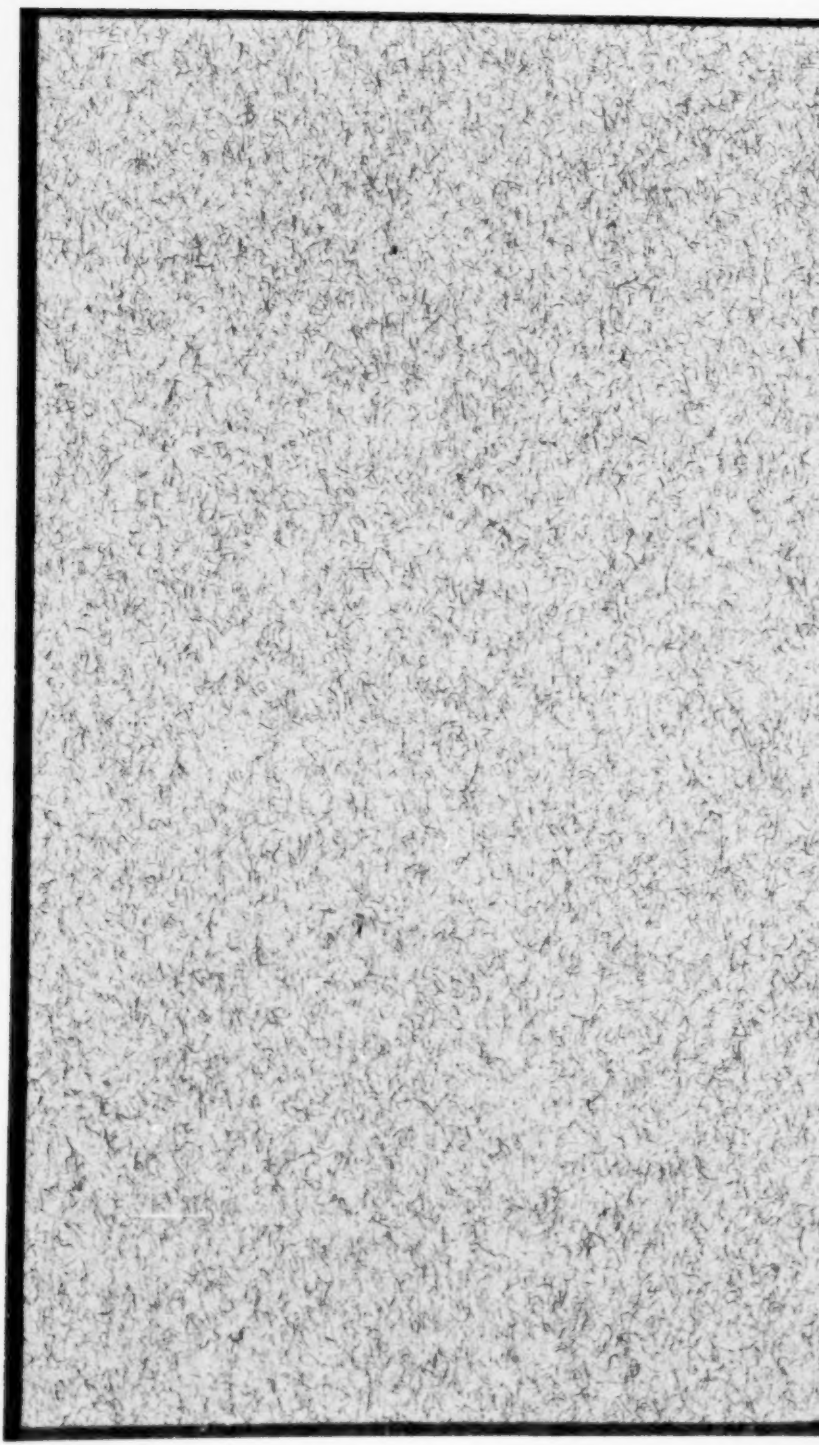
Nos. 407, 409, 411, 413, 415, 417

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,
vs.
ALICE M. RAMSEY ET AL.,
DEFENDANTS IN ERROR.

Nos. 408, 410, 412, 414, 416, 418

BRIEF OF H. F. FERRY, PLAINTIFF IN ERROR.

J. B. McKAY,
L. J. BOND,
Both of El Dorado, Kansas,
Attorneys for Plaintiff in Error, H. F. Ferry.



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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

ALICE M. RAMSEY, C. L. KING AND L. D. HADLEY, DEFENDANTS IN ERROR.

No. 407

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

vs.

ALICE M. RAMSEY, C. L. KING, H. F. FERRY ET AL., DEFENDANTS IN ERROR.

No. 408

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

W. O. JAMES, C. L. KING AND L. D. HADLEY, DEFENDANTS IN ERROR.

No. 409

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

vs.

W. O. JAMES, C. L. KING, H. F. FERRY ET AL., DEFENDANTS IN ERROR.

No. 410

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

RAMSEY PETROLEUM COMPANY, C. L. KING, L. D. HADLEY ET AL., DEFENDANTS IN ERROR.

No. 411

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

vs.

RAMSEY PETROLEUM COMPANY, C. L. KING, L. D. HADLEY ET AL., DEFENDANTS IN ERROR.

No. 412

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

G. L. RAMSEY, C. L. KING ET AL., DEFENDANTS IN ERROR.

No. 413

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

vs.

G. L. RAMSEY, C. L. KING, H. F. FERRY ET AL., DEFENDANTS IN ERROR.

No. 414

H. F. FERRY, PLAINTIFF IN ERROR,

vs.

M. R. CHASTAIN, C. L. KING, L. D. HADLEY ET AL., DEFENDANTS IN ERROR.

No. 415

C. L. HARRIS, as Executor of the Last Will and Testament of T. A. Kramer, Deceased, Plaintiff in Error,

vs.

M. R. CHASTAIN, C. L. KING, L. D. HADLEY ET AL., Defendants in Error.

No. 416

H. F. FERRY, Plaintiff in Error,

vs.

A. L. LLOYD, C. L. KING and L. D. HADLEY, Defendants in Error.

No. 417

C. L. HARRIS, as Executor of the Last Will and Testament of T. A. Kramer, Deceased, Plaintiff in Error.

vs.

A. L. LLOYD, C. L. KING and H. F. FERRY ET AL., Defendants in Error.

No. 418

BRIEF OF H. F. FERRY, PLAINTIFF IN ERROR.

Official Report of the Opinions Delivered in the Court Below.

G. L. Ramsey, Appellant and Cross Appellee, *v.* E. F. Adams, C. L. King, A. B. Ewing, H. F. Ferry, L. D. Hadley, C. L. Harris, Executor of the Last Will and

Testament of T. A. Kramer, deceased, Appellees and Cross Appellants.

The Ramsey Petroleum Company, Appellant, *v.* E. F. Adams *et al.*, Appellees.

The Ramsey Petroleum Company, Appellee, *v.* E. F. Adams *et al.*, Appellees (C. L. King and H. F. Ferry, Appellants).

The Ramsey Petroleum Company, Appellee, *v.* E. F. Adams *et al.* (L. D. Hadley), Appellants, 122 Kan., 675.

W. O. James, Appellant and Cross Appellee, *v.* E. F. Adams *et al.*, Appellees, and C. L. King, H. F. Ferry and L. D. Hadley, Cross Appellants.

A. E. Lloyd, Appellant and Cross Appellee, *v.* E. F. Adams *et al.*, Appellees, and C. L. King, H. F. Ferry and L. D. Hadley, Cross Appellants.

Alice M. Ramsey, Appellant and Cross Appellee, *v.* E. F. Adams *et al.*, Appellees, and C. L. King, H. F. Ferry and L. D. Hadley, Cross Appellants.

M. R. Chastain, Appellant and Cross Appellee, *v.* E. F. Adams *et al.*, Appellees, and C. L. King, H. F. Ferry and L. D. Hadley, Cross Appellants, 122 Kan., 691.

The constitutional question here presented was also presented to and determined by the Supreme Court of Kansas on a former appeal in the same cases, reported under the title of Ramsey Petroleum Company *v.* Adams, 119 Kan., 844.

Statement of the Grounds on Which the Jurisdiction of This Court is Invoked.

1. The judgment complained of was rendered against this plaintiff in error in the trial court, on

March 27, 1926 (T., 335), and said judgment was affirmed on appeal by the Supreme Court of Kansas, on February 12, 1927 (T., 348), and this plaintiff in error's petition for a rehearing was denied by said Supreme Court on April 16, 1927 (T., 369).

2. This plaintiff in error has always contended that the statutes hereinafter quoted, under which this action was prosecuted, are unconstitutional and void. This question was first raised in the trial court by a demurrer to plaintiff's petition (T., 8), which demurrer was overruled by the trial court (T., 10). The unconstitutionality of the statutes was next raised by this plaintiff in error in his separate answer (T., 17, see paragraphs 8 and 9 on pages 20 and 21). Defendant in error demurred to these paragraphs of such answer (T., 41, see paragraphs 4 and 5 on page 42), and such demurrers were sustained by the trial court (T., 43, see page 45). From this ruling of the trial court, sustaining such demurrer, this plaintiff in error prosecuted an appeal to the Supreme Court of Kansas, which court upheld the ruling of the trial court. (Ramsey Petroleum Company *v.* Adams, 119 Kan., 844, decided on December 5, 1925.) This plaintiff in error specifically raised the same points by an objection to the introduction of any testimony under the petition (T., 89 and 90), which motion was overruled by the trial court (T., 91). This plaintiff in error again specifically raised the same points by his motion for a new trial (T., 332, see paragraph 7 on page 333), which motion was overruled by the trial court (T., 335). The constitutionality of the statutes was assailed by this plaintiff in error on the appeal to the Supreme Court of

Kansas which then resulted, and that court again upheld the constitutionality of such statutes. (Ramsey *v.* Adams, 122 Kan., 675.) This plaintiff, in due time, filed in such Supreme Court his motion for a rehearing, which that Court overruled on April 16, 1927 (T., 369).

3. The jurisdiction of this Court is invoked under the provisions of Sec. 237, of the Judicial Code, paragraph A, which provides:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn, in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error * * *."

4. Cases believed to sustain the jurisdiction of this Court are:

Milheim *v.* Moffat Tunnel Improvement Dist. (1924) 262 U. S., 710; 67 L. Ed., 1194; 43 Sup. Ct. Rep., 694.

Louisville & N. R. Co. *v.* Melton, 218 U. S., 36, 39; 54 L. Ed., 921; 47 L. R. A. (N. S.), 84; 30 Sup. Ct. Rep., 676.

Schlesinger *v.* State of Wisconsin, 270 U. S., 230; 46 Sup. Ct. Rep., 260; 70 L. Ed., 301.

Wolff Packing Co. *v.* Court of Industrial Relations, 67 L. Ed., 1103.

Statement of the Case.

Six cases have been brought to this Court by this plaintiff in error against six different defendants in error. The cases are identical in all material respects, and an order was made by this Court on October 31, 1927, consolidating the cases for hearing (T., 396). To avoid useless repetition and confusion the one entitled H. F. Ferry, plaintiff in error, *v.* Alice M. Ramsey *et al.*, defendants in error, No. 407, being one of the cases in which the whole record was printed, is discussed in this brief. All that may be said respecting this case will apply with equal force to all of the others. The Court will understand that C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, is also plaintiff in error in six cases against the same defendants in error, which have been consolidated with the six cases in which this plaintiff, H. F. Ferry, is plaintiff in error. The executor is filing a separate brief.

The amended petition on which the case was tried alleged that the defendants, including this plaintiff in error, were officers and directors of the Butler County State Bank of El Dorado, Kansas, at the time of its failure, which occurred on March 30, 1923, and that such bank was a banking corporation organized under the laws of the State of Kansas, and that the plaintiff below deposited certain sums of money in said bank at times when it was insolvent and in failing circumstances, and that defendants below, including this plaintiff in error, knew, and for more than six months

prior to such time had known, that said bank was in said condition "or by an examination into the affairs of said bank—which it was their duty to make—they could have ascertained such fact, and the plaintiff had no knowledge of the actual condition of said bank until the same was closed * * *" (T., 7) "and that such defendants, notwithstanding their knowledge and means of knowledge, assented to the bank receiving the said deposits as hereinbefore stated" (T., 7). The prayer was for the recovery of the balance remaining in such account at the date of the failure of the bank. The action was based on two statutes of the State of Kansas which are hereinafter quoted in full. From the very outset this plaintiff in error challenged the constitutionality of these statutes in the times and manner disclosed by the preceding pages of this brief. Trial was had, resulting in a judgment against this plaintiff in error and his codefendants, for the amount of such deposit with interest from the date of the failure of the bank (T., 335).

This judgment, as above stated, was affirmed by the Supreme Court of Kansas on appeal. This plaintiff in error has at all times admitted that he was an officer and director of the bank, but has at all times denied that the bank was insolvent or in failing circumstances at any of the times alleged in the amended petition, and at all times has denied that he knew said bank to have been in such insolvent or failing condition, or that by an examination into the affairs of said bank at any of said times he could have ascertained that said bank was insolvent or in failing circumstances, and denied

that he assented to the reception of any deposits knowing that the bank was insolvent or in failing circumstances (T., 18).

No effort will be made in this brief to state the facts brought out at the trial in any considerable detail, as they are not of any particular materiality in connection with the constitutional question raised by this appeal. We may say, however, that, so far as this plaintiff in error is concerned, the evidence disclosed that the bank was organized by Mr. J. B. Adams, who had charge of the note case and the making of loans up to the time of his death. Mr. Adams died about two years prior to the failure of the bank and while an examination of the bank was in progress. The bank examiner directed Mr. C. L. King, the president of the bank, to keep the bank open for business, reporting to the bank department once a month on its condition (T., 221). Mr. Ferry was not at that time an active officer of the bank, although he had been previously. In January, 1922, Mr. F. H. Foster, the then bank commissioner, called Mr. Ferry to Topeka and asked him to reenter the bank as an active officer, as the cashier of the bank was retiring. Mr. Ferry acceded to this request and became cashier in January, 1922 (T., 227). Mr. Ferry testified that, from the date he reentered the bank as its cashier, he examined into its affairs from time to time to the best of his ability, and "never entertained the idea that the bank was insolvent. I was positive at all times the bank would work out. I expected it to sustain some losses, the

principal loss to be in the Merydith line. I was positively convinced that we could work the institution out'' (T., 228). During most of the time that elapsed between the date of Mr. Adams' death and the closing of the bank Mr. F. H. Foster was bank commissioner of the State of Kansas. He testified that he kept in close touch with the affairs of the bank after Mr. Adams' death and arrived at the conclusion that the bank was not insolvent (T., 194). He was succeeded as bank commissioner by Mr. C. J. Peterson, during whose administration the bank was closed. Mr. Peterson testified that he took charge of the banking department in February, 1923, and that his predecessor, Mr. Foster, directed his attention to this bank as one to which Mr. Foster had been devoting particular attention (T., 139). That he thereupon discussed the affairs of the bank with its president, Mr. King, and told Mr. King that it was agreeable with him for the bank to be kept open. He caused his deputies to make various examinations of the bank and report to him on its condition and interviewed various interested persons, and that after receiving his confidential reports he was not convinced that the bank was insolvent (T., 140). The bank ultimately was closed, not by the bank commissioner, but by its own officers when symptoms of a run developed (T., 232).

Specification of Errors.

1.

The plaintiff in error contends that in the above entitled cause, in the trial court and in the Supreme Court

of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

> "It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution, to assent to the reception of deposits or the creation of debts by such banking institution to assent to the reception knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and, if possible, know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted: *Provided*, Any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities."

was drawn in question by said plaintiff in error on the ground that said statute was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute; and that in the trial court and the Supreme Court of the State of Kansas the

validity of Section 9-164, of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

> "In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents, or managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be *prima facie* evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith."

was drawn in question by the plaintiff in error on the ground that the statute was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute.

2.

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163, of the Revised Statutes of the State of Kansas for the year 1923, were valid, and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States,

and in holding and deciding that by the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not denied the equal protection of the law.

3.

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas for the year 1923 were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was deprived of property without due process of law, and was not denied the equal protection of the law.

4.

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, which by its terms created a conclusive presumption of knowledge against said plaintiff in error, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

5.

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent, or in failing circumstances at the time of the reception of the deposit charged to have been received, *prima facie* evidence of the assent of the plaintiff in error to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

6.

Plaintiff in error contends that the evidence in said cause fails to show that he knew the said Butler County State Bank was insolvent at the time in question, and fails to show that said Butler County State Bank was insolvent at the time in question, and that the evidence in this cause fails to show that the plaintiff in error assented to the reception of the deposits in question.

(T., 385, 386, 387, and 388.)

ARGUMENT.

As will have been noted from the foregoing, this appeal, so far as this plaintiff in error is concerned, raises only the question of whether or not the two sections of the statutes of Kansas, under which these actions are brought, are constitutional and valid or

unconstitutional and void. There could of course be no recovery except for the statutes. These two statutes have been quoted incidentally in the specification of errors, but for the convenience of the court they are here reproduced:

> 9-163: "It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution, to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and, if possible, know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted: *Provided*, Any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities."
>
> 9-164: "In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents, or managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined

> as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be *prima facie* evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith."

It is plaintiff in error's contention that Section 9-163, which makes it unlawful for an officer of a banking institution to assent to the reception of deposits after he shall have had knowledge of the fact that the bank is insolvent, creates a conclusive presumption of such knowledge of insolvency from the fact that such officer did not examine into the affairs of the bank. It will be noticed that the liability of the officer under this statute is not absolute, but only those officers are liable who assent to the reception of deposits with knowledge of the fact that the bank is insolvent. That being the case, it is our contention that the legislature could not make failure to examine, conclusive evidence of such knowledge.

With respect to the second section, being Section 9-164, it is our contention that the legislature has created a *prima facie* presumption from the fact that the bank was in failing circumstances, that the officer assented to its receiving deposits when there is no rational or logical connection between the two.

For these reasons we contend that both statutes are violative of the Fourteenth Amendment.

As stated above, this case first reached the Supreme Court of Kansas on an appeal taken by this plaintiff in error and his codefendants, from an order of the trial court sustaining a demurrer to that part of their separate answers which raised the question of the constitutionality of these statutes. The decision of such Supreme Court was in favor of the validity of the statutes and is reported under the title of Ramsey Petroleum Company *v.* Adams, 119 Kan., 844. When these cases again reached the Supreme Court of Kansas on an appeal from the final judgment against this plaintiff in error and certain of his codefendants, that court again upheld the constitutionality of such statutes and it is from that decision that this appeal is prosecuted.

Considering first Section 9-163, which, as we contend, creates a conclusive presumption of knowledge from the failure to examine, it will be noted that the statute makes only such directors liable as assent to the reception of the deposits with knowledge of the insolvency of the bank. That being true, the plaintiff in such a case is required to prove knowledge of insolvency and assent to the reception of deposits and want of knowledge, and want of assent would, therefore, be complete defenses to such an action. Want of knowledge, therefore, being a complete defense to such an action, we contend that the legislature cannot say that a bank officer is conclusively presumed to have had such knowledge by reason of his failure to have examined the bank. The natural inference to be drawn

from the fact that a person has made no investigation of a particular subject is that he knows nothing about the subject. In this instance the statute seeks to reverse the natural order of things by creating a conclusive presumption that an officer who makes no examination of the bank knows that it is insolvent, if such be the case. The statute gives the officer no opportunity to show that he had no reasonable opportunity to make an investigation and the Supreme Court of Kansas in construing the statute has held that when no examination is made, it is immaterial that such examination if made would have been futile.

> "The contention of the plaintiffs in error, put into as narrow a compass as possible, is that the proper interpretation of these sections is that it is the duty of a director to examine into the affairs of the bank, and if he fail to do so he shall be held to have knowledge of the bank's insolvency, and consequently be liable to a depositor if by such examination it would have been possible for him to ascertain the condition of the bank. We are unable to agree with them in this construction. * * * An examination by the officer is required, regardless of what it may show. * * * A director may not excuse himself from liability to a depositor by saying * * * that it would have been useless for him to make such examination because the speculations of the cashier were of such character, and carried on and concealed with so skilful a hand, that he, not being an expert, could not have discovered them. * * * In short, the requirement of the statute is that the

examination be made, and be of such character as would result in a knowledge of the condition of the bank if such knowledge could possibly, within the range of reasonable frequency and thoroughness, be obtained.

"We do not think that the plea of a director sought to be charged with liability under the quoted statutes, that he made no examination, but that if he had, it would not have been possible for him to ascertain the failing condition of the bank, is sufficient to excuse him from the liability imposed by law."

Forbes *v.* Mohr, 69 Kan., 342.

Want of knowledge being a defense, we contend that the defendant in an action of this kind has the right to prove want of knowledge, and the effect of the statute creating against the officer a conclusive presumption of knowledge is to deprive the officer of property without due process of law. The controlling general principles are well stated in 12 C. J., page 1233, where it is said:

"Evidence. The legislature in its discretion may, without denial of due process of law, prescribe changes in the rules of evidence for the trial of civil cases, and may make such changes applicable to existing causes of action, past transactions, and even to pending cases, subject in all cases, however, to the limitations that it may not preclude a party from presenting the facts supporting his theory of the case. It may, for example, create presumptions, regulate the burden of proof and the admissibility of evidence, and may provide that official cer-

tificates, records, or orders, and other writings, shall constitute *prima facie* evidence of the facts stated therein, and, in general, that proof of certain facts shall constitute *prima facie* evidence of other facts with which they have a rational connection. The legislature may not, however, arbitrarily provide that proof of one fact shall constitute even *prima facie* evidence of another fact that it has no reasonable tendency to establish. And statutes making written instruments conclusive evidence of facts stated therein, or making proof of certain fact conclusive evidence of other facts, operate to deny a hearing on the facts in issue, and thus violate the guaranties of due process of law. An apparent, but not real, exception to this latter rule is that statements made by a party in a written instrument, such as a warehouse receipt, or an insurance policy, may be conclusive against the party making such statements, on the ground of estoppel."

The same principles are stated in 6 R. C. L., 462, as follows:

"General Principles. The legislature has power to establish rules of evidence, where not in conflict with the Constitution or rights guaranteed by it. And under this power it may declare that a fact shall be *prima facie* evidence of another fact which it has a tendency to prove. The fact on which a presumption is to rest must have some fair relation to, or some natural connection with, the fact to be proved, and the existence of the established fact must reasonably tend to raise an inference of the main fact.

> There are fixed bounds to the power of the legislature over the subject of evidence which must not be exceeded. As to what shall be evidence, and who shall assume the burden of proof, its power is unrestricted so long as its rules are impartial and uniform; but it has no power to establish rules which, under pretense of regulating evidence, altogether prohibit a party from exhibiting his rights, since this would substantially deprive him of due process of law. A conclusive presumption cannot be established which would overrule the essential facts and thereby preclude a party from asserting the truth."

The Supreme Court of Kansas has recognized and applied these principles. We quote from Railway Company *v.* Simonson, 64 Kan., 802:

> "The theory on which all these cases proceed is that an act of the legislature which undertakes to make a particular fact or matter in evidence involving the substantive right of the case conclusive upon the parties, and which precludes inquiry into the meritorious issues of the controversy, is an invasion of the judicial province and a denial of due process of law. The legislature may regulate the form and the manner of use of the instruments of evidence—the media of proof—but it cannot preclude a party wholly from making his proof. A statute which declares what shall be taken as conclusive evidence of a fact is one which, of course, precludes investigation into the fact, and itself determines the matter in advance of all judicial inquiry. If such statutes can be upheld

there is then little use for courts, and small room indeed for the exercise of their functions."

The following quotations are taken from Petersilie *v.* McLachlin, 80 Kan., 176:

"It is everywhere conceded that the legislature may declare that a record or an instrument or a copy thereof or a fact proved shall be presumptive or *prima facie* evidence of the existence of some other fact, but where it attempts to make these evidential things conclusive it passes the bounds of legislative power and invades the province of the courts, and, in the language of the court in Railway Co. *v.* Simonson, *supra*, 'precludes investigation into the fact, and itself determines the matter in advance of all judicial inquiry' (Page 808). The legislature, in Section 3, attempted to interfere with the power of the courts and to forbid the investigation of facts by a declaration that certain testimony or other evidential data shall be conclusive, and this is beyond the province of the legislature. The holder of the first certificate is thus deprived of the right to prove the actual facts as they exist, and his property is transferred by a legislative act to another. That this is not due process of law is so clear as not to require argument. In Felix *v.* Wallace County, *supra*, Mr. Justice Smith, speaking for the Court, said:

"'The legislature can not be allowed to thrust its arbitrary declarations into such adversary proceedings and decide which party would prevail. It is without power to substitute its judgment in a disputed matter for that of a court, en-

> gaged in the work of administering justice by orderly methods, after discovering the truth by hearing evidence on both sides admitted according to legal rules' (Page 838).

"In the seventh edition of Cooley's Constitutional Limitations, at page 526, the author says:

> "'But there are fixed bounds to the power of the legislature over this subject which can not be exceeded, * * * but it has no power to establish rules which, under pretense of regulating the presentation of evidence, go so far as altogether to preclude a party from exhibiting his rights. * * * In judicial investigations the law of the land requires an opportunity for a trial; and there can be no trial if only one party is suffered to produce his proofs.'"

To the same effect are the decisions of this Court in McFarland *v.* American Sugar Refining Company, 241 U. S., 79; 60 L. Ed., 899, it was said:

> "As to the presumptions, of course, the legislature may go a good way in raising one or in changing the burden of proof, but there are limits. It is 'essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.'
>
> "Mobile J. & K. C. R. Co. *v.* Turnipseed, 219 U. S., 35, 43; 55 L. Ed., 78, 80; 32

L. R. A. (n. s.), 226; 31 Sup. Ct. Rep., 136; Ann. Cas., 1912, A., 463; 2 N. C. C. A., 243."

These authorities and many more, some of which will be hereafter noted, were cited in the first appeal to the Supreme Court of Kansas, and concerning them that court said:

> "Is this imposition of liability for negligence and official delinquency at odds with the fourteenth amendment? Defendants so contend; they cite texts and authorities, including our own cases, like Railway Company *v.* Simonson, 64 Kan., 802; 70 Pac., 881, and Petersilie *v.* McLachlin, 80 Kan., 176; 101 Pac., 1014, to the effect that due process of law is denied by a statutory declaration that such and such facts shall be conclusive proof of something required to be established in a judicial proceeding when such facts are not of such inherently probative character. With this general doctrine of the cases relied on there need be no quarrel; certainly this Court has no disposition to disturb legal principles of such fundamental worth. (12 C. J., 1233-1234; 6 R. C. L., 462; 2 Wigmore on Evidence, 2d ed., 1016 *et seq.*) But we cannot agree that the statutory provision under present scrutiny is justly subject to the criticism leveled against it. The provision reads: 'And upon failure of any such person (officer or director) to discharge such duty (to examine the bank) he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances.' This is not an arbitrary edict of the

legislature making evidence out of facts which are without inherent evidential significance, nor an arbitrary perversion of the rules of evidence. It is rather a statutory declaration of substantive law. We have many such rules of substantive law touching civil liability. Analogous liabilities are imposed by substantive law, even where there is little or no element of actual wrongdoing or negligence on the part of those subjected thereto. Such is the plight of stockholders of an insolvent bank. So, too, a business partner is liable as a matter of law for many acts and delicts of his copartner or of his servant, although such acts or delicts may have been committed without his knowledge or assent, and even in violation of his wishes and instructions. Nothing is more common than the imposition of liability upon a principal for the acts, contracts or torts of his agent when done under color of his agency, although the principal may have been in no sense morally culpable for such acts."

The only authorities which the Kansas court cited in support of its position were 2 Wigmore on Evidence, 2d ed., 1055, and Orient Insurance Co. *v.* Daggs, 172 U. S., 557; 43 L. Ed., 552. An examination of the quotation from Wigmore discloses that the author does not cite a single case to support the text. Contrary to Professor Wigmore's contention it is said in 12 C. J., 1234, notes 93, 94 and 95:

"And statutes making written instruments conclusive evidence of facts stated therein, or

> making proof of certain facts conclusive evidence of other facts, operate to deny hearing on the facts in issue, and thus violate the guaranties of due process of law."

Numerous cases are cited in *Corpus Juris* to sustain this quotation. Neither does the case of Orient Insurance Co. *v.* Daggs sustain the position of the Kansas court. The statute invoked in that case changed policies of insurance from open policies to valued policies. It permitted the parties to fix their own valuation but it did not make that valuation conclusive on all points. The following excerpts from the opinion of this Court show that that case is not applicable to this situation:

> "The statute, then, does not present the alternative of wager policies to indemnity policies. The change is from one kind of indemnity policy to another kind—from open policies to valued policies—both of which are sanctioned by the practice and law of insurance and this change is the only compulsion of the law. It makes no contract for the parties. In this it permits absolute freedom. It leaves them to fix the valuation of the property upon such prudence and inquiry as they choose. It only ascribes estoppel after this is done—estoppel, it must be observed, to the acts of the parties, and only to their acts, in open and honest dealing. Its presumptions cannot be urged against fraud, and it permits the subsequent depreciation of the property to be shown. * * *
>
> "The cases cited by plaintiff in error, which hold that the legislature may give the effect of

> *prima facie* proof to certain acts, but not conclusive proof, do not apply. They were not of contract nor gave effect to contracts. It is one thing to attribute effect to the convention of parties entered into under the admonition of the law, and another thing to give to circumstances, maybe accidental, conclusive presumption and proof to establish and force a result against property or liberty."

This case is analyzed and distinguished in Shellebarger Elevator Co. *v.* Ill. C. R. Co., in L. R. A. 1917E, pages 1016 and 1017.

Similarly the Kansas statute under consideration does not relate to any matter concerning which the directors and depositors have entered into a contract. It is a statute imposing liability upon the directors for accepting deposits after knowledge that the bank is insolvent. The statute attempts to establish rules of evidence under which the depositor may prove his case against the directors and does not enact a rule of substantive law. To give the statute the effect which the Kansas court announces in the first case, the statute would have to read that every director shall be liable to depositors if he fails to make an examination of the bank. The statute does not so provide and cannot be so construed. The liability is based upon assent after knowledge of insolvency and the conclusive presumption raised is a method provided for proving insolvency. Conceding for the moment the power of the legislature to establish a rule of absolute liability upon the part of a director who failed to examine, it is plain

that the legislature had no intention of so doing. What the legislature did intend to do was to make it easier for the depositor to prove his case.

In Ashley *v.* Frame, 4 K. A., 265, it was held that this statute imposed a penalty on the director for his failure to do a duty, but this case was overruled in Frame *v.* Ashley, 59 Kan., 477, in which the Supreme Court held that the action is upon a "liability created by statute" and not, as was held by the court of appeals, "upon a statute for penalty or forfeiture."

After the preliminary decision referred to in 119 Kan., and before the last decision was announced in 122 Kan., the Supreme Court of the United States decided the case of Schlesinger *v.* State of Wisconsin, 270 U. S., 230; 46 Sup. Ct. Rep., 260; 70 L. Ed., 301, which was cited to the Supreme Court of Kansas on the second appeal to it, being the one now under consideration. Concerning that decision the Kansas court said:

> "A contention that the statute is analogous to a Wisconsin statute considered by the Supreme Court of the United States in Schlesinger v. State of Wisconsin, 270 U. S. 230; 46 Supt. Ct. Rep. 260; 70 L. Ed. 301, may be briefly noticed. The statute of Wisconsin to which reference is made provided that any transfer of any substantial part of a grantor's property within six years prior to his death without an adequate consideration should be construed to have been made in contemplation of death and subject to the inheritance tax. In the Schlesinger case the decedent made a transfer of some five million

dollars of his property, or substantially all of his estate, to relatives within from two to four years of his death. A tax was imposed upon his estate upon these gifts. The lower court found that actually the testator did not make the transfers in contemplation of death, but that the statute raised a conclusive presumption that he did. On appeal the case was affirmed by the Supreme Court of Wisconsin, but was reversed by the Supreme Court of the United States. In the opinion by the latter, it was said:

" 'The challenged enactment plainly undertakes to raise a conclusive presumption that all material gifts within six years of death were made in anticipation of it and to lay a graduated inheritance tax upon them without regard to the actual intent. The presumption is declared to be conclusive and cannot be overcome by evidence. It is no mere *prima facie* presumption of fact.'

"The Wisconsin statute is not analogous to ours. Ours does not undertake to raise a conclusive presumption as does the Wisconsin statute. The Wisconsin statute provides no escape from its provisions; ours does. Ours provides a mere *prima facie* presumption of fact which may be overcome by a showing on the part of the director of having examined into the affairs of the bank to know if possible its condition or some other *bona fide* reason that he (the director) was physically or otherwise unable to know its condition. The other provision of our statute which holds the director to have knowledge of the bank's condition because of his failure to discharge his duties is a declaration of substantive law, *i. e.*, it creates an obliga-

tion on the part of the director to do certain things which if done will relieve him of liability to the depositor. It also gives the depositor a right to recover from him if he fails in this regard to do his duty."

"We conclude that the Schlesinger case is not controlling here and adhere to our former decision that the statute under consideration does not deprive the defendants of property without due process of law."

122 Kan., 677, 678, 679.

The Supreme Court of Wisconsin in upholding the validity of the statute said:

"The legislature does not say that a gift not made in contemplation of death is actually made in contemplation of death. What it says is that, if the gift is made within six years of the donor's death, it shall for taxation purposes be construed to fall within the class of gifts made in contemplation of death. The law is quite full of instances where, on grounds of public policy, so as to effectively administer a law, a certain definite and fixed legal import is given to facts, though the actual facts may be different. Thus dividends declared by a going corporation are conclusively declared to be made out of profits for income tax purposes, though the actual facts may be quite the contrary. Van Dyke *v.* Milwaukee, 159 Wis. 460, 146 N. W. 812, 150 N. W. 509; State *ex rel.* Pfister *v.* Widule, 166 Wis. 48, 163 N. W. 641; Pfister Land Co. *v.* Milwaukee, 166 Wis. 223, 165 N. W. 23; State *ex rel.* Sallie F. Moon Ci *v.* Wis. Tax. Comm., 166 Wis. 287, 163 N. W. 639, 165 N. W. 470. So insurance

payable upon the death of a person shall be deemed a part of his estate for the purpose of the tax, though the deceased may not have paid a single premium upon the insurance. Upon the death of a joint tenant of property, one-half shall be deemed taxable to the estate, though the interests may be different. Such provisions are made in order that the administration of tax laws may not be made too cumbersome, expensive, and uncertain, and to avoid escape from taxation. If A conveys his property to B to avoid his creditors, though upon the express promise that he will upon demand reconvey, the statute steps in and says on grounds of public policy that the promise cannot be enforced. The chapter on real property is full of instances where the Legislature gives a conclusive construction to the title grant or relation of the parties, when certain facts appear or certain language is used, irrespective of what the particular parties meant."

but in disposing of these contentions this Court said:

"No question is made of the state's power to tax gifts actually made in anticipation of death, as though the property passed by will or descent; nor is there denial of the power of the State to tax gifts *inter vivos* when not arbitrarily exerted.

"The challenged enactment plainly undertakes to raise a conclusive presumption that all material gifts within six years of death were made in anticipation of it and to lay a graduated inheritance tax upon them without regard to the actual intent. The presumption is declared to to be conclusive and cannot be overcome by evi-

dence. It is no mere *prima facie* presumption of fact.

"(1) The court below declared that a tax on gifts *inter vivos* only could not be so laid as to hit those made within six years of the donor's death and exempt all others—this would be 'wholly arbitrary.' We agree with this view and are of opinion that such a classification would be in plain conflict with the Fourteenth Amendment. The legislative action here challenged is no less arbitrary. Gifts *inter vivos* within six years of death, but in fact made without contemplation thereof, are first conclusively presumed to have been so made without regard to actualities, while like gifts at other times are not thus treated. There is no adequate basis for this distinction. Secondly, they are subjected to graduated taxes which could not properly be laid on all gifts or, indeed, upon any gift without testamentary character.

"(2) The presumption and consequent taxation are defended upon the theory that, exercising judgment and discretion, the Legislature found them necessary in order to prevent evasion of inheritance taxes. That is to say, A may be required to submit to an exactment forbidden by the Constitution if this seems necessary in order to enable the State readily to collect lawful charges against B. Rights guaranteed by the Federal Constitution are not to be so lightly treated; they are superior to this supposed necessity. The State is forbidden to deny due process of law or the equal protection of the laws for any purpose whatsoever.

"(3) No new doctrine was announced in Stebbins *v.* Riley, 45 S. Ct., 424; 268 U. S., 137; 69

L. Ed., 884, cited by defendant in error. A classification for purposes of taxation must rest on some reasonable distinction. A forbidden tax cannot be enforced in order to facilitate the collection of one properly laid. Mobile, etc., R. R. *v.* Turnipseed, 31 S. Ct., 136; 219 U. S., 35, 43; 55 L. Ed., 78; 32 L. R. A. (N. S.), 226; Ann. Cas., 1912A, 463, discusses the doctrine of presumption.

"The judgment of the court below must be reversed. The cause will be remanded for further proceedings not inconsistent with this opinion."

In the Wisconsin case the tax was dependent upon the mental condition of the grantor; that is, whether or not he was making the transfer in contemplation of death. This tax was assessed if the transfer was actually made in contemplation of death, regardless of the time when it was made. But in order to fix a rule of liability the statute there prescribed that one making a transfer within six years of his death should be presumed to have had a mental attitude which he did not have; that is, he was presumed to have made a transfer in contemplation of death, regardless of whether or not he had such intention.

Here, the liability is fixed upon a director who assented to reception of deposits after knowledge of insolvency. The liability depends upon a mental condition, to wit, knowledge. For the purpose of making the act more readily enforceable, however, the legislature has prescribed that under certain conditions

that mental condition (knowledge) will be conclusively presumed, regardless of whether it existed or not. The two cases are identical.

It is to be noted that the Supreme Court of the United States in the above case said that the legislature cannot make those things actualities which are not. And the legislature cannot impose upon a director liability on the ground that he would have had knowledge of the true condition of the bank had he made an examination, when the fact is such examination would not have disclosed the condition of the bank.

Even viewed as a rule of substantive law, the statute would be unconstitutional for another reason. As stated above, it was held in the case of Frame *v.* Ashley, 59 Kan., 477, that such an action is upon a liability created by statute. If the statute be treated as a rule of substantive law, it at the most imposes a civil liability to compensate the depositors for loss resulting from the failure of the director to perform the duty imposed by the statute, to examine the bank. Such a statute would be unconstitutional because of being unreasonable and arbitrary in placing such a liability upon the directors without regard to whether such neglect of duty to examine occasioned the loss or not. The Kansas court says that directors shall be liable if they have failed to examine into the affairs of the bank, no matter if such examination would have been futile. Forbes *v.* Mohr, 69 Kan., 342. In other words, the Kansas court has construed the statute to impose an absolute liability upon failure to examine, regard-

less of what an examination would have disclosed, and regardless of whether the failure to examine was the proximate cause of the loss. If an examination into the affairs of the bank would not have shown its true condition, then to award compensatory damages to the depositors because of the failure to examine is to take the property of the directors without due process of law, because their neglect had no causal relation to the injury. This rule is well stated in 29 Cyc., 439, where it is said:

> "Although the violation of a statute is held to be negligence *per se*, there must be a causal relation between such act and the injury to render defendant liable, and such violation must be the proximate cause of the injury. And in this respect it must appear that compliance with the ordinance would have prevented the injury."

Numerous cases are cited in support of this text (Notes 74, 75 and 76), including Hodgson *v.* Dexter, 12 Fed. Cas., 6565; 1 Cranch, C. C., 109, affirmed; 1 Cranch, 345; 2 L. Ed., 130.

Reverting to the last decision of the Kansas court, it will be noted that the majority opinion sought to draw distinction between the statutes under consideration and the Wisconsin statute involved in the Schlesinger case. The court said that the Wisconsin statute raised a conclusive presumption, while the Kansas statute provides "a mere *prima facie* presumption of fact which may be overcome by a showing on the part of the director of having examined into the affairs of the bank to know, if possible, its condition or some

other bona fide reason that he (the director) was physically or otherwise unable to know its condition." The quoted statement from the opinion does not meet the case. The statute very positively creates not a "mere *prima facie* presumption," but a conclusive presumption against a director who does not examine. Further, the opinion of the Kansas court is not consistent. The sentence following the one quoted says: "The other provision of our statute which holds a director to have knowledge of the bank's condition because of his failure to discharge his duties, is a declaration of substantive law, *i. e.*, it creates an obligation on the part of the director to do certain things, which, if done, will relieve him of liability to the depositor. It also gives the depositor a right to recover from him if he fails in this regard to do his duty." What "other provision" of the statute the court had in mind we are unable to state. The only provision to which the court could have referred when it said a *prima facie* presumption was created and the only one it could have meant which it says is a declaration of substantive law, is "and upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank * * *." In other words, the Kansas court analyzes this statute and says in the first sentence that it creates a *prima facie* presumption of fact and in the next sentence that it is a declaration of substantive law. As a matter of fact it is neither, but creates a conclusive presumption.

It should be noted that the last decision of the Kansas court was a four to three decision. Justice Burch

dissented generally so far as indicated. Justice Harvey concurred specially, basing his concurrence upon the view that there is no legal excuse available to a director who does not examine, and that such a director is under the statute conclusively held to know the condition of the bank. Under this view of the statute the majority of the Kansas court seems to concede that it would be unconstitutional. Justice Dawson dissented, saying in part: "This Court makes a clear distinction between the present cases and the Schlesinger case, *supra*. * * * And since we must or do concede that the constitutionality of our statute is dependent upon its being given an interpretation which will fairly justify a distinction between the liability imposed on a bank director under the Kansas statute and such a liability as was sought to be imposed by the Wisconsin statute in the Schlesinger case, it will not do to impose a liability on Kramer's estate regardless of the jury's verdict. The court's decision should be consistent with itself. To avoid running afoul of the Federal Constitution, we interpret our statute as not precluding a judicial inquiry touching Kramer's physical condition so as to determine his culpability and the possible liability of his estate; but in doing so we collide with a fundamental principle of appellate review by substituting our judgment for that of the jury and the trial court on the well-defined and conceded issue of fact." As we interpret Justice Dawson's dissenting opinion, he is of the view that the statute as interpreted and applied against Kramer's executor is unconstitutional. We are not going into this phase of the mat-

ter at length because we apprehend that it will be dealt on in the executor's brief to be filed herein.

Section 9-164.

Section 9-164 is, we contend, also violative of the 14th Amendment, but for a somewhat different reason. That section, so far as now material, provides that the fact that the banking institution was insolvent at the time of the reception of the deposit shall be *prima facie* evidence of the fact that the directors assented to the reception of such deposit. It is the rule as stated in many of the authorities quoted above, which it is not necessary to repeat here, that even a *prima facie* presumption cannot be created where there is no rational or logical connection between the fact upon which the presumption is to rest and the fact to be proved. The existence of the established fact must reasonably tend to raise an inference of the main fact. Now how can it be said that the fact that a bank is insolvent, reasonably tends to raise an inference that its officers assented to its receiving deposits? Ordinarily courts do not assume that persons intend to violate the law. In the preliminary appeal to it the Supreme Court of Kansas said concerning this statute:

> "It is argued that there is not a sufficiently fair relation or connection between such evidential facts as declared by the statute and the main ultimate fact to be judicially ascertained—whether the officer, agent or manager actually did know of the bank's financial unsoundness. We cannot agree to this contention. We think the matters, declared in this statute to be *prima*

facie evidence of the ultimate fact, have inherently probative significance of a highly potent character."

119 Kan., 852.

The statement does not meet the point. The court says that there is a fair relation between the evidential facts as declared by the statute and the ultimate fact to be ascertained, whether the officer knew of the bank's condition. The question is whether there is a fair relation between the fact that the bank was insolvent and the fact presumed therefrom, that its officers assented to its receiving such deposits. In other words, under the statute a plaintiff is required only to prove that the bank was insolvent and there then arises a *prima facie* presumption that a director, who in fact may have been thousands of miles away at the time, assented to its receiving plaintiff's deposit. The situation is worse than that. Under Sec. 9-163, plaintiff, upon proof that an officer was absent and consequently made no examination of the bank, creates a conclusive presumption that such absent officer knew the bank to be insolvent, and from the fact that the bank was insolvent, Sec. 9-164, created a *prima facie* presumption that he assented to the reception of deposits, so that the only evidential fact the plaintiff would be required to prove would be the absence of the director and the presumptions created by the statute would complete the plaintiff's case. As to *prima facie* presumptions, and in addition to the authorities already quoted, it is only necessary to quote from the opinion of this Court in McFarland *v.* American Sugar

Refining Co., 241 U. S., 79; 60 L. Ed., 899, where it is said:

> "As to the presumptions, of course, the legislature may go a good way in raising one or in changing the burden of proof, but there are limits. It is essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate."

It should also be noted that Section 9-164 attempts to create a presumption based on a presumption.

R. S., 9-163, fixes the liability upon assent to the reception of deposits after knowledge of insolvency. It therefore appears that knowledge is a prerequisite to assent. There can be no assent until there is knowledge. Not only does this statute recognize this fact, but all definitions of the word "assent" lead to the same conclusion.

5 C. J., 811, note (*a*) defines "Assent" as follows:

> "Assent is an act of the mind; that intelligent power in man by which he conceives, reasons and judges, and of which it is a primary, invariable and most familiar law that it cannot act with reference to external objects, until, through the medium of the senses, it is impressed with or knows their existence. Hence, without such impression or knowledge, there can be no assent, no *actus contra actum;* and to presume it, in opposition to the facts, is to presume that which is impossible; which the law,

the rules and precepts of which are in conformity with the unchanging truths of nature, will never do." Welch *v.* Sackett, 12 Wis., 243, 257.

(2) "Assent is primarily an act of the understanding * * *. It presupposes that the person to be affected has knowledge of his rights." Jewell *v.* Jewell, 84 Me., 304, 307; 24 A., 858; 18 L. R. A. (quot. Hanscom *v.* Home Ins. Co., 90 Me., 333,339; 38 A., 324).

(*d*) "Mere negligence insufficient. To constitute assent, there must be something more than mere negligence on the part of a director of a corporation in not knowing what, in the exercise of proper care, he ought to have known. There must be some willful or intentional violation of duty—an assenting to an act, knowing that it is being or is about to be done. Patterson *v.* Stewart, 41 Minn., 84, 94; 42 N. W., 926; 16 Am. S. R., 671; 4 L. R. A., 745."

It follows from these decisions, as well as from the very words of the statute, that assent is based in part upon the previous condition of knowledge.

The statute here provides that proof of insolvency shall constitute *prima facie* evidence not only of knowledge, but of assent. Therefore, inasmuch as assent is based in part upon knowledge, the statute provides for a presumption upon a presumption.

In 22 C. J., page 84, it is said:

"An inference of fact should not be drawn from premises which are uncertain, but the

> facts upon which an inference may legitimately rest must, it is said, be established by direct evidence as if they were the very facts in issue. It follows that one presumption cannot be based on another presumption."

The latter part of the syllabus in Railroad Co. *v.* Baumgartner, 74 Kan., 148, says:

> "One presumption of fact cannot, in law, become the basis of another presumption of fact."

In U. S. *v.* Ross, 92 U. S., 281, the court, in speaking of the mode of reasoning by which a conclusion is sought to be arrived at by basing one presumption on another, said:

> "They are inferences from inferences: presumptions resting on the basis of another presumption. Such a mode of arriving at a conclusion of fact is generally, if not universally, inadmissible. No inference of fact or of law is reliable drawn from premises which are uncertain. Whenever circumstantial evidence is relied upon to prove a fact, the circumstances must be proved and not themselves presumed. * * * The law requires an open, visible connection between the principal and evidentiary facts and the deductions from them, and does not permit a decision to be made on remote inferences * * *. A presumption which the jury is to make is not a circumstance in proof; and it is not, therefore, a legitimate foundation for a presumption."

In Manning *v.* John Hancock Mut. L. Ins. Co., 100 U. S., 693, the court said:

> "We do not question that a jury may be allowed to presume the existence of a fact in some cases from the existence of other facts which have been proved. But the presumed fact must have an immediate connection with or relation to the established fact from which it is inferred. If it has not, it is regarded as too remote. The only presumptions of fact which the law recognizes are immediate inferences from facts proved."

In 10 Ann. Cas., page 1097, under the heading "Application of Rule," are found many instances where it has been held that one presumption cannot be based upon another.

The case of Cunard Steamship Co. *v.* Kelley, 126 Fed., 610; 61 C. C. A., 533, affords an analogous instance to the present case. There it was held that a presumption that a certain person must have seen marks upon certain goods could not be based upon the presumption that his duty required him to observe such marks. The reason of the decision was that it called for a presumption upon a presumption. So here it cannot be presumed that the directors assented to the reception of deposits merely because it was their duty to examine into the affairs of the bank.

In 10 R. C. L., 870, it is said:

> "It is a well-established rule that a presumption can be legally indulged only when the facts from which the presumption arises are proved

> by direct evidence, and that one presumption cannot be deduced from another. To hold that a fact inferred or presumed at once becomes an established fact, for the purpose of serving as a base for a further inference or presumption, would be to spin out the chain of presumptions into the regions of the barest conjecture."

In Manning *v.* John Hancock Mut. L. Ins. Co., 100 U. S., 693, *supra,* it was held that a presumption that insurance premiums had been paid over by insurance agents to the company could not be based on presumptions that the premiums were paid to the agents. It was also held that the latter presumption could not be based on a presumption that certain policies which had been in force did not lapse, but were renewed.

The rule has been sanctioned in Kansas in Duncan *v.* Railroad, 82 Kan., 230, l. c., 233, where the court said:

> "It has been said that one presumption of fact cannot in law become the basis of another presumption of fact."

Assent as specified in the statute can only be given after knowledge. The very idea conveyed by the word "assent" includes knowledge. One cannot assent to that of which he has no knowledge. Hence assent is based upon knowledge. To provide that knowledge and assent is to be presumed from insolvency is to say that proof of insolvency presumes knowledge and from this presumption of knowledge, assent is presumed. This cannot be legally done. Hence so far as R. S. 9-164 attempts to make proof of assent dependent upon

proof of insolvency, the statute is unconstitutional and void and violates the due process clause of the Federal Constitution.

In Simpkins *v.* State, 249 Pac., 168 (Okla.), it was held that a statute which provided that the having of intoxicating liquor in possession by the driver of an automobile is *prima facie* evidence of a violation of the act prohibiting the driving of an automobile while intoxicated, was unconstitutional, as basing a presumption upon a presumption, that is, from the fact that defendant had liquor in his possession, it was presumed that he had partaken of it and upon that presumption it was presumed that he had become intoxicated. This decision was based in part upon the authority of U. S. *v.* Ross, 92 U. S., 281.

We submit under the authorities cited, no legislature can create a conclusive presumption of liability or a conclusive presumption of evidence and make that thing true which is not true. Every person has a constitutional right to present his defense to every material issue in the case. A material issue in such a case as this is whether a director had knowledge of the insolvency of his bank. A statute that creates a conclusive presumption of such knowledge against him, deprives him of his right to present his defense. Another material issue is whether he assented to the bank receiving deposits and the creation against him of *prima facie* presumption that he did so assent because the bank was insolvent is likewise to deprive him of his property without due process of law.

We respectfully submit that each of these sections of the statute should be declared unconstitutional and that the judgments of the Supreme Court of Kansas in all of the consolidated cases should be reversed, with directions to render judgment for this plaintiff in error.

Respectfully submitted,

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Attorneys for Plaintiff in Error, H. F. Ferry.

FILED
FEB 23 1928
CHARLES ELMORE CROPL
CLER

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1927.

H. F. FERRY,
Plaintiff in Error,
vs.
ALICE M. RAMSEY et al.,
Defendants in Error,
No. 407.

C. L. HARRIS, as Executor of the Last Will and Testament of T. A. KRAMER, Deceased,
Plaintiff in Error,
vs.
ALICE M. RAMSEY, C. L. KING, H. F. FERRY and L. D. HADLEY,
Defendants in Error.
No. 408.

And Nos. 409, 410, 411, 412, 413, 414, 415, 416, 417 and 418, Consolidated for Hearing.

In Error to the Supreme Court of the State of Kansas.

BRIEF OF C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, ON MOTION TO DISMISS OR AFFIRM.

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In the

SUPREME COURT OF THE UNITED STATES.

October Term, 1927.

H. F. FERRY,
Plaintiff in Error,
vs.
ALICE M. RAMSEY et al.,
Defendants in Error.

No. 407.

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED,
Plaintiff in Error,
vs.
ALICE M. RAMSEY, C. L. KING, H. F. FERRY and L. D. HADLEY,
Defendants in Error.

No. 408.

H. F. FERRY,
Plaintiff in Error,
vs.
W. O. JAMES, C. L. KING and L. D. HADLEY,
Defendants in Error.

No. 409.

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED,
Plaintiff in Error,
vs.
W. O. JAMES, C. L. KING, H. F. FERRY and L. D. HADLEY,
Defendants in Error.

No. 410.

H. F. FERRY,
Plaintiff in Error,
vs.
RAMSEY PETROLEUM COMPANY, C. L. KING, L. D. HADLEY et al.,
Defendants in Error.
No. 411.

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED,
Plaintiff in Error,
vs.
RAMSEY PETROLEUM COMPANY, C. L. KING, H. F. FERRY and L. D. HADLEY,
Defendants in Error.
No. 412.

H. F. FERRY,
Plaintiff in Error,
vs.
G. L. RAMSEY, C. L. KING et al.,
Defendants in Error.
No. 413.

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED,
Plaintiff in Error,
vs.
G. L. RAMSEY, C. L. KING, H. F. FERRY and L. D. HADLEY,
Defendants in Error.
No. 414.

H. F. FERRY,
Plaintiff in Error,
vs.
M. R. CHASTAIN, C. L. KING, L. D. HADLEY et al.,
Defendants in Error.
No. 415.

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED,
Plaintiff in Error,
vs.
M. R. CHASTAIN, C. L. KING, H. F. FERRY and L. D. HADLEY,
Defendants in Error.
No. 416.

H. F. FERRY,
Plaintiff in Error,
vs.
A. E. LLOYD, C. L. KING and L. D. HADLEY,
Defendants in Error.
No. 417.

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED,
Plaintiff in Error,
vs.
A. E. LLOYD, C. L. KING, H. F. FERRY and L. D. HADLEY,
Defendants in Error.
No. 418.

In Error to the Supreme Court of the State of Kansas.

BRIEF OF C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, ON MOTION TO DISMISS OR AFFIRM.

The opinion of the Supreme Court of the State of Kansas in Cases Nos. 411, 412, 413 and 414 is reported in 122 Kansas, p. 675, and the opinion of the Supreme Court of the State of Kansas in Cases Nos. 407, 408, 409, 410, 415, 416, 417 and 418 is reported in 122 Kansas, p. 691.

STATEMENT ON CONSOLIDATION.

Each of the defendants in error, G. L. Ramsey, The Ramsey Petroleum Company, M. R. Chastain, A. E. Lloyd, Alice M. Ramsey and W. O. James, commenced an action in the District Court of Butler County, Kansas, to recover deposits alleged to have been made in the Butler County State Bank, the actions being brought under Sections 9-163 and 9-164, R. S. 1923, as is more fully set out under the next heading, "Statement on Jurisdiction." They were as follows:

G. L. Ramsey commenced an action against C. L. King, H. F. Ferry, L. D. Hadley, A. B. Ewing, G. W. Lyon, E. F. Adams and C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, to recover the sum of $22,726.16.

The Ramsey Petroleum Company brought the same kind of action against the same defendants to recover the sum of $27,211.96.

M. R. Chastain brought the same kind of action against the same defendants to recover the sum of $1,429.94.

A. E. Lloyd brought the same kind of action against the same defendants to recover the sum of $915.77.

Alice M. Ramsey brought the same kind of action against the same defendants to recover the sum of $7,063.67.

W. O. James brought the same kind of action against the same defendants to recover the sum of $7,819.72.

In all cases the pleadings of all parties were the same except the names of the plaintiff and the amount claimed.

The case brought by G. L. Ramsey was tried before a jury and a separate verdict was returned as to each of the defendants except the defendants Lyon and Adams, in whose favor demurrers to the evidence were sustained (R. Nos. 407 and 408, pp. 330-331), and as to whom no formal verdicts were returned. A separate judgment was rendered in favor of the plaintiff and against each of the defendants, C. L. King, H. F. Ferry, A. B. Ewing and L. D. Hadley, on the verdicts returned against them. On the verdict returned in favor of this plaintiff in error a separate judgment was rendered in favor of him and against G. L. Ramsey in bar of the action (R. Nos. 407 and 408, pp. 335-337). G. L. Ramsey appealed to the Supreme Court of the State of Kansas from the judgment rendered against him in favor of this plaintiff in error and from the judgment sustaining the demurrer to the evidence as to E. F. Adams. He made no one a party to this appeal except this plaintiff in error and E. F. Adams. This case was docketed separately in the Supreme Court of the State of Kansas. Afterwards C. L. King, H. F. Ferry and L. D. Hadley appealed from the judgments rendered against them in favor of G. L. Ramsey.

A transcript of the testimony in the G. L. Ramsey case was made, and each of the other cases mentioned above was tried before the Court without a jury under a stipu-

lation that the transcript of the testimony in the G. L. Ramsey case should be considered as the evidence in each of those cases with the additional evidence as to the amount of the deposit claimed by each plaintiff.

The case brought by The Ramsey Petroleum Company was the next case tried after the G. L. Ramsey case, and the Court found the facts against the defendants, King, Ferry, Ewing and Hadley, and found the facts in favor of this plaintiff in error. The Court made a separate finding as to this plaintiff in error (R. Nos. 407 and 408, p. 340). Separate judgments were rendered in favor of The Ramsey Petroleum Company against each of the defendants, C. L. King, A. B. Ewing, H. F. Ferry and L. D. Hadley. A separate judgment was rendered in favor of this plaintiff in error against the said The Ramsey Petroleum Company (R. Nos. 407 and 408, p. 340). Demurrers to the evidence were again sustained in favor of Adams and Lyon.

The Ramsey Petroleum Company appealed from the judgments rendered against it in favor of E. F. Adams and this plaintiff in error. Such appeal was docketed separately in the Supreme Court of the State of Kansas as case No. 27,213. C. L. King and H. F. Ferry appealed from the separate judgments rendered against them and this case was docketed as case No. 27,217. L. D. Hadley appealed from the separate judgment rendered against him in favor of The Ramsey Petroleum Company and this case was docketed separately as case No. 27,230. The Ramsey Petroleum Company in its appeals made no one parties except E. F. Adams and this plaintiff in error.

It having been called to the attention of the Supreme Court of the State of Kansas that these cases each presented the same question, they were ordered consolidated

for hearing, and the appellants, G. L. Ramsey and The Ramsey Petroleum Company, were granted permission to file one abstract, which appears in this record as the abstract in case No. 27,109 in the Supreme Court of Kansas, and is found in R. Nos. 407 and 408, pp. 1 to 367, inclusive. The opinion of the Supreme Court of Kansas is found in 122 Kans. 675.

And that Court entered a judgment in each case affirming the judgments in favor of E. F. Adams and the respective judgments against C. L. King, H. F. Ferry and L. D. Hadley, reversing the judgments in favor of this plaintiff in error, and remanded the cases with instructions to render a judgment in favor of each plaintiff in the court below against this plaintiff in error.

The cases brought by M. R. Chastain, A. E. Lloyd, Alice M. Ramsey and W. O. James were afterwards tried. The trial court in each of these cases found in favor of the plaintiffs and against the defendants, King, Ferry, Hadley and Ewing, and sustained demurrers to the evidence as to E. F. Adams and Lyon, and in each case made a separate finding in favor of this plaintiff in error, the findings being identical with the findings made in the case of The Ramsey Petroleum Company as set out in R. Nos. 407 and 408, p. 340. Separate judgments were rendered in each of these cases in favor of the plaintiff and against King, Ewing, Hadley and Ferry. The judgments were identical except as to amounts with the judgments rendered in the case of The Ramsey Petroleum Company (R. Nos. 407 and 408, pp. 340-341). Judgment was rendered in each of these cases in favor of this plaintiff in error and against the respective plaintiffs, which was in each case identical with the judgment rendered in the case of

The Ramsey Petroleum Company (R. Nos. 407 and 408, p. 340).

W. O. James appealed to the Supreme Court of the State of Kansas from the judgment rendered against him in favor of this plaintiff in error and from the order sustaining the demurrer to the evidence as to E. F. Adams. No other persons were made parties to this appeal. C. L. King, H. F. Ferry and L. D. Hadley appealed from the judgments rendered against each of them and in favor of W. O. James. These cases were docketed in the Supreme Court as case No. 27,395.

A. E. Lloyd appealed from the judgment rendered against him in favor of this plaintiff in error and from the judgment sustaining the demurrer to the evidence as to E. F. Adams. No other persons were made parties to this appeal. C. L. King, H. F. Ferry and L. D. Hadley appealed to the Supreme Court of the State of Kansas from the judgments rendered against each of them and in favor of A. E. Lloyd.

Alice M. Ramsey appealed from the judgment rendered against her in favor of this plaintiff in error and from the judgment sustaining the demurrer to her evidence as to E. F. Adams. No other parties were made parties to this appeal. C. L. King, H. F. Ferry and L. D. Hadley appealed from the judgments rendered against each of them and in favor of Alice M. Ramsey.

M. R. Chastain appealed from the judgment rendered against her and in favor of this plaintiff in error and from the judgment sustaining the demurrer to her evidence as against E. F. Adams. C. L. King, H. F. Ferry and L. D. Hadley appealed from the judgments rendered against each of them and in favor of M. R. Chastain.

The appeals in the G. L. Ramsey and The Ramsey Petroleum Company case came on for hearing in the Supreme Court of the State of Kansas, and the Court thereupon ordered the appeals in the James case, the Lloyd case, the Alice M. Ramsey case and the M. R. Chastain case to be submitted on the same argument and briefs and upon the same abstract made and filed in the G. L. Ramsey case and The Ramsey Petroleum Company case. The Court rendered a memoranda decision in these last cases and entered a judgment in each affirming the judgments in favor of E. F. Adams and the respective judgments against C. L. King, H. F. Ferry and L. D. Hadley, and reversing the judgments in favor of this plaintiff in error, and remanded these cases with instructions to render a judgment in favor of each plaintiff in the court below against this plaintiff in error.

Thus, it will be seen that the same question is involved in each of these cases. The pleadings of each of the parties to the suits and the evidence in each of the suits are the same, except as to the names of the different plaintiffs and the amount claimed. There is no difference in the verdicts, findings and judgments in the different cases in the trial court except as to the names of the plaintiffs and the amounts. There is no difference in the appeals to the Supreme Court of Kansas except as to the names of the appellants and the same judgment was rendered by the Supreme Court of Kansas in each of the cases.

From the judgment of the Supreme Court of the State of Kansas in the G. L. Ramsey case reversing the judgment of the court below in favor of this plaintiff in error, this plaintiff in error is prosecuting a writ of error to this Court. He is also prosecuting a like writ of error from the like judgments of the Supreme Court of Kansas ren-

dered against him in each of the other cases, to wit: The Ramsey Petroleum Company case, the W. O. James case, the A. E. Lloyd case, the Alice M. Ramsey case and the M. R. Chastain case.

The record in the Supreme Court of the State of Kansas in these various cases, setting out the testimony and the opinions of the Supreme Court in all of the cases and the judgments rendered in the G. L. Ramsey case and The Ramsey Petroleum Company case are all printed in R. Nos. 407 and 408, pp. 1 to 369, inclusive.

An order of consolidation and with reference to printing was made by the Supreme Court of the United States, consolidating cases 407 to 418, inclusive (R. Nos. 407 and 408, p. 396; R. Nos. 409 and 410, p. 26; R. Nos. 411 and 412, p. 26; R. Nos. 413 and 414, p. 26; R. Nos. 415 and 416, p. 25; R. Nos. 417 and 418, p. 25).

Under this order the cases were consolidated for hearing with directions to print the whole record in two of the cases and only so much of the record in the remaining cases as was necessary to show the difference between the cases, and a praecipe in accordance with this order was filed with the clerk of the Supreme Court for the printing of the record (R. Nos. 407 and 408, p. 395).

The writs of error prosecuted by C. L. Harris as executor were docketed in this court and appear as cases numbered 408, 410, 412, 414, 416 and 418.

H. F. Ferry prosecuted separate writs of error from this court to the Supreme Court of the State of Kansas on the judgments rendered against him and these cases are docketed in this court as Nos. 407, 409, 411, 413, 415 and 417.

STATEMENT ON JURISDICTION.

The date of the judgment of the Supreme Court of Kansas in each of the cases is February 12, 1927 (R. in 407, 408, p. 347; R. in 409, 410, p. 1; R. in 411, 412, p. 2; R. in 413, 414, p. 2; R. in 415, 416, p. 1; R. in 417, 418, p. 1).

Petitions for rehearing were denied in each of the cases April 16, 1927 (R. in 407, 408, p. 369; R. in 409, 410, p. 1; R. in 411, 412, p. 2; R. in 413, 414, p. 2; R. in 415, 416, p. 1; R. in 417, 418, p. 1).

Each of the defendants in error, Alice M. Ramsey, W. O. James, The Ramsey Petroleum Company, G. L. Ramsey, M. R. Chastain and A. E. Lloyd, was a depositor in the Butler County State Bank, located at El Dorado, Kansas. C. L. King was president and a director of the bank, H. F. Ferry was cashier and a director, A. B. Ewing, L. D. Hadley and T. A. Kramer were directors of the bank. The State Bank Commissioner took charge of the bank March 30, 1923. Shortly thereafter each of the above-named defendants in error commenced a suit against the said officers and directors, and also against E. F. Adams and G. W. Lyons to recover the balance to his credit in said bank. The petitions in each of the suits were exactly the same, except as to the name of the plaintiff and the amount claimed. Each suit was based on the following provisions of the statutes of the State of Kansas:

> "9-163. Transactions During Insolvency.—It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution, to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such bank-

ing institution to examine into the affairs of the same, and, if possible, know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted. **Provided**, any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities."

"9-164. Proceedings Under Foregoing Section.—In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents or managers of any such banking institutions charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith."

Each defendant in each suit filed a separate answer. In each answer of this plaintiff in error he alleged that the above-mentioned sections of the Revised Statutes of Kansas for 1923 were unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States (R. in 407, 408, p. 31).

In each answer this plaintiff in error set forth the physical and mental incapacity of T. A. Kramer, his decedent,

during all of the time in question in the suits (R. 407 and 408, pp. 26 to 29).

Demurrers were sustained to the allegations of the answers alleging the unconstitutionality of these statutes (R. in 407, 408, p. 456).

An appeal was taken to the Supreme Court of the State of Kansas from the ruling of the Court sustaining these demurrers, and the action of the lower court was sustained.

Ramsey Petroleum Company v. E. F. Adams et al., 119 Kan. 844, 241 Pac. 433.

Upon the trial this plaintiff in error objected to the introduction of any evidence because of the unconstitutionality of said statutes (R. in 407 and 408, pp. 89, 90).

Upon the trial the evidence showed that T. A. Kramer during all of the time in question was physically and mentally incapacitated to transact any business; that he became seriously ill in Boston in August, 1922; that after remaining there for some time in a hospital he was taken to East St. Louis, Illinois; that he was unable to leave East St. Louis, but remained there until he died in July, 1923; and, of course, during said time did not examine into the affairs of the bank (R. in 407, 408, pp. 221, 234-242).

The evidence also showed that E. F. Adams and G. W. Lyons were not directors of the bank at any of the times in question, and the Court sustained a demurrer to the evidence as to them in each of the cases on this ground.

A separate verdict was returned by the jury as to each defendant in the case tried to the jury (R. in 407, 408, p. 330), and a separate finding was made by the Court as to each defendant in the cases tried by the Court (R. in 407, 408, pp. 339 and 340).

A separate judgment was rendered in each case as to each defendant. A judgment was rendered against C. L. King for the full amount claimed in each case and a like judgment against H. F. Ferry, L. D. Hadley and A. B. Ewing and a judgment was rendered in each case in favor of this plaintiff in error and against the plaintiff in each case (R. Nos. 407, 408, pp. 335, 336, 337, 340 and 341).

From each judgment in favor of this plaintiff in error each respective plaintiff in the court below prosecuted an appeal to the Supreme Court of the State of Kansas and from each judgment in favor of the plaintiff and against C. L. King, H. F. Ferry and L. D. Hadley they each appealed to the Supreme Court of the State of Kansas.

In each of the appeals of the said plaintiffs against this plaintiff in error, this plaintiff in error again contended that each of the statutes above mentioned was unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States. This contention was taken up, discussed and decided by the Supreme Court of the State of Kansas and each of said statutes was held to be valid and not in violation of the Fourteenth Amendment to the Constitution of the United States and it was further held that under the provisions of said sections 9-163, T. A. Kramer's representative was prohibited from showing any reason or excuse why said T. A. Kramer had not made an examination of the bank and the Court held that T. A. Kramer was conclusively held to have had knowledge of the insolvent condition of the bank because of his failure to examine (R. in 407, 408, p. 348).

The Supreme Court affirmed the judgment in favor of E. F. Adams in each case and affirmed each of the judgments against C. L. King, H. F. Ferry and L. D. Hadley and reversed the judgments in favor of this plaintiff in error with directions to the lower court to enter judgment

in each case against this plaintiff in error for the amounts claimed to be due by the plaintiffs below.

Jurisdiction of this Court is invoked under the provisions of ~~a~~ paragraph a of Section 237 of the Judicial Code, United States Code, Title 28, Sec. 344.

The following decisions sustain the jurisdiction of this Court to review the judgment below:

Commonwealth Bank of Ky. v. Griffith, 14 Pet. 56, 39 U. S. 55;
Merchants Natl. Bank v. City of Richmond, 256 U. S. 635, 65 L. Ed. 1135.

STATEMENT.

All of the above actions were brought in the District Court of Butler County, Kansas, to recover of the officers and directors of the Butler County State Bank on account of deposits made by the different plaintiffs in the month of March, 1923, a time when it was claimed the bank was in an insolvent condition and so known to be to such officers and directors.

The parties sued in each case were C. L. King, H. F. Ferry, L. D. Hadley, A. B. Ewing, E. F. Adams, G. W. Lyon and this plaintiff in error. In each of the cases the Court, at the close of the plaintiff's testimony, sustained demurrers as to Lyon and Adams on the ground that the evidence showed they were not officers or directors of the bank at the time of the reception of the deposits in question.

The case brought by G. L. Ramsey was tried to a jury and the Court submitted separate verdicts, one for each defendant, which appear on page 330 R. in Nos. 407-408. The jury returned separate verdicts as to each of the de-

fendants. As to this plaintiff in error the jury returned a verdict in his favor and against the plaintiffs. In the cases tried before the Court, separate findings were made and separate judgments rendered as to each of the defendants and in each of the cases the Court found in favor of this plaintiff in error and against the various plaintiffs.

In each of the cases tried in the District Court the various plaintiffs appealed from the various judgments rendered in favor of E. F. Adams, sustaining her demurrer to the evidence and to the various judgments rendered in favor of this plaintiff in error and against the various plaintiffs. In each of these appeals the plaintiff below made none of the parties in the lower court parties to the appeals except this plaintiff in error and E. F. Adams. C. L. King, H. F. Ferry and L. D. Hadley prosecuted separate appeals from the judgments rendered against them and in favor of the plaintiffs. The appeals were docketed as separate causes, but were argued and submitted on the briefs and abstract filed in the G. L. Ramsey case and in the Ramsey Petroleum Company case so that the appeals of the Supreme Court stood as follows:

G. L. Ramsey appealed from the judgment rendered against him in favor of this plaintiff in error and Adams; so did the Ramsey Petroleum Company and each of the other plaintiffs below in each of the other cases in the District Court of Butler County. In each of these appeals the Court affirmed the judgment as to Mrs. Adams, so that she is no longer interested in any way in these cases and has no judgment against her, and she went out of the cases on the sole proposition that she was neither an officer or director of the bank at any of the times involved in any of these cases. The Supreme Court of Kansas reversed the various judgments in favor of this plaintiff in

error, with instructions to enter in each of the cases a judgment in favor of the respective plaintiffs and against this plaintiff in error. No one was a party in the Supreme Court of Kansas in any of these appeals from the judgments of the lower court in favor of E. F. Adams and this plaintiff in error, except the plaintiffs in the various cases and this plaintiff in error and E. F. Adams. E. F. Adams, upon a decision of the Supreme Court of the State of Kansas, affirming the judgments of the lower court in her favor, had no further interest of any kind in the litigation. From the judgment of the Supreme Court in each of these various cases, reversing the judgment of the lower court in his favor and ordering a judgment against him, this plaintiff in error has prosecuted a writ of error.

In the District Court separate answers were filed by each of the defendants in such actions.

This plaintiff in error filed an answer in each suit, in which he denied all the allegations of the petition and in addition alleged that Section 9-163 of the Revised Statutes of 1923, under which the action was brought, was in violation of the Fourteenth Amendment to the Constitution of the United States, in that it sought to deprive him of property wtihout due process of law, and in that it denied to him in the jurisdiction of the State of Kansas equal protection of the law. And also alleged that Section 9-164, Revised Statutes of 1923, was in violation of the Fourteenth Amendment to the Constitution of the United States, in that it denied to him equal protection of the law, and in that it deprived him of property without due process of law (R. Nos. 407-408, p. 31). He also denied that the bank was insolvent or in failing circumstances at the time of the reception of the deposits, and denied that his decedent, T. A. Kramer, knew that said

bank was in a failing condition or insolvent, and denied that the said T. A. Kramer, by an examination into the affairs of the bank could have ascertained that the bank was insolvent or in failing circumstances; denied that T. A. Kramer assented to any reception of such deposit, and also denied that T. A. Kramer, at any time, participated in the active conduct and management of the affairs of said bank, except in connection with such duties as he may have performed from time to time as a director of said bank.

He also made the following allegations:

"And further answering, this defendant alleges that T. A. Kramer, prior to the 10th day of July, 1922, and about the.....day of August, 1918, lived in the State of California, and on said last-mentioned date and while still in California was taken sick with obstruction of the bowels and was compelled to and did undergo a severe surgical abdominal operation, from the result of which he never fully recovered, and on or about the .... day of May, 1920, he returned to Eldorado, Kansas, where he was again compelled, by an aggravated recurrence of said trouble, to undergo another serious abdominal operation, and was by reason thereof unable to attend to any business, and was confined to the hospital where the operation was performed for a period of about three weeks, and after his discharge from the hospital was sick and enfeebled by reason of such condition, and never fully recovered therefrom. That on or about the 10th day of July, 1922, being still enfeebled and in poor health, he left Eldorado on a trip for the purpose of rest and recuperation, and went to East St. Louis, Illinois, where he remained with his brother, R. J. Kramer, until July 23, 1922, when, still seeking rest and recuperation, he left with his brother, J. H. Kramer,

for an Eastern trip, and on August 15, 1922, when near the City of Boston, Massachusetts, he had an attack of complete bowel obstruction, which entirely prevented the passage of fecal matter through the bowels, and was immediately taken to the Commonwealth Avenue Hospital and placed in charge of competent surgeons, and on August 16, 1922, he underwent a surgical operation for this trouble, which was performed by Dr. Henry M. Chase of Boston. His abdomen was opened and it was found that the small intestines were completely obstructed by a large number of adhesions, and that the small intestines were ruptured and it was impossible to release all the adhesions. That the rupture of the small intestines never healed, but remained open during the the remainder of his life, and the incision in his abdomen made in such operation remained open during the rest of his life. That for a time after said operation it was impossible for him to take nourishment in the usual way, and it became necessary to give him nourishment through the opening in the bowels.

"That from the 16th day of August, 1922, until the time of his death, which occurred July, 1923, he had what is known as a fecal fistula at the place where the incision was made for the operation, and during all the remainder of his life fecal matter from the small intestines constantly passed from the opening and inflamed the wound and flesh about the wound, and caused him great and constant pain and suffering. For some time after said operation he was sick and hovered between life and death with little hope of recovery, and afterwards and on September 4, 1922, his condition became so serious that it became necessary to perform another abdominal operation, and such operation was performed and restrictions of the bowels at different places were removed so far as it was possible to remove the same, but it was impos-

sible to remove all of such restrictions. In this operation another opening was made through the abdominal walls over the cecum in the illio cecal region. That on account of his weakened physical condition it was impossible at this operation to give him an anesthetic, and in the performance of this operation a local anesthetic, called novocain, was used. After this operation he remained very sick and weak for more than a month, but finally gained sufficient strength so that by the middle of October, 1922, he was able to sit in a chair and move about the room without assistance.

"That on or about the 1st day of November, 1922, while he was still suffering greatly, it was determined best to remove him from said hospital and take him to East St. Louis, Illinois, to the home of his brother, R. J. Kramer, where he might be among his relatives, and where he might receive and could receive and would receive the personal care and attention which he required.

"That during his trip from Boston to East St. Louis, he had to remain in his berth in the drawing room under the constant care of his nurse. That after he arrived at East St. Louis, he regained sufficient strength to enable him to walk about a little in the room, but this lasted for only two or three days. That he remained in East St. Louis until he died there on the 23rd day of July, 1923. That during all the time he was in East St. Louis, except the period of two or three days above mentioned, he was confined to his bed, except for short periods during which he was able to sit up in his chair when placed therein by his attendant.

"That during all the time from the first operation until the time of his death he was under the care of surgeons and physicians and two nurses.

"That about the middle of December, 1922, it became apparent to his physicians that another opera-

tion was necessary, and he was thereupon removed to the Deaconess Hospital in East St. Louis, and on December 20, 1922, another abdominal operation was performed, to wit, the abdomen was opened at the outer border of the left rectus muscle, and the small intestine was anastomosed with the large intestines, and it was then discovered that it was impossible to release or remove all the adhesions binding the small intestines. That after this operation his condition did not improve, and the fistula before mentioned did not heal. That he remained at said hospital about a month, when he was again taken to the home of his brother in East St. Louis, where his condition gradually grew worse until the date of his death.

"That from the time of his first operation until the time of his death, by reason of his sickness, suffering and physical condition he was unable to attend to any business of importance. That he suffered all the time intense and severe pain; that by reason of his condition he was unable to return to Eldorado at any time from the date of his first operation, on August 16, 1922; that his suffering was so intense, his physical condition of such a character and nature and so affected him that it was impossible for him to direct his mind for any length of time to any business matter, or give any attention to any business affairs at any time, and he was unable to concentrate his mind for any length of time on any of his affairs.

"That by reason of the facts and circumstances above set forth, it was impossible for him to give any attention to the affairs of said Butler County State Bank and during all of said period he had no access to the books and records of said bank and was in no condition physically or mentally to make any examination of the business or the condition of said bank, and it was impossible for him to assent to the acceptance of any deposits in said bank. That during all the period of his illness as above described he was

constantly attended by his brothers and their families, and, acting under the advice of his physicians, all matters of business were kept from him so far as possible, to prevent him from worrying over the same and injuring his health thereby. That it would have been impossible for him to give any serious attention or consideration to business matters without seriously injuring his health and shortening his life."

Evidence was offered in support of the above allegations, and the physical and mental condition of Mr. T. A. Kramer, from the time he was taken sick in Boston, July, 1922, until the date of his death, was shown to be substantially as set out in the answers (R. Nos. 407, 408, pp. 221, 234 to 242).

At the close of the testimony in relation to the physical and mental condition of T. A. Kramer, the plaintiff in the lower court interposed an objection, which was overruled. The objection is found on page 242 of the transcript of the record in cases Nos. 407 and 408.

The Court instructed the jury in the jury case that if it found from the evidence that Kramer was in the condition described and by reason thereof unable to examine into the condition of the bank, it should not take into consideration such failure in determining the question of whether he did or did not have knowledge of the insolvent condition of the bank, and instructed it that if he was in the condition described, and by reason thereof physically or mentally unable to make any examination, he would not be required to make an examination and he would not be chargeable with failure so to do (pp. 324, 325 R. in 407 and 408).

Separate verdicts were submitted as to each of the defendants. Five verdicts were returned into court, one of them finding against C. L. King in the sum of $19,379.34,

and similar verdicts as to the other defendants except this plaintiff in error. They returned the following verdict as to him:

> "We, the jury impaneled and sworn in the above-entitled cause, do upon our oath find for the defendant C. L. Harris, executor of the estate of T. A. Kramer, deceased, not liable on account of said T. A. Kramer being physically unfit to know the condition of the Butler County State Bank at the time the deposits were made by the plaintiff that are now in controversy" (R. Nos. 407, 408, p. 330).

The plaintiff filed a motion for a new trial, which was overruled. Separate judgments were entered on the verdicts. The judgment as to King, Ferry and Ewing is found on pages 335 and 336 of the transcript of the record in Nos. 407, 408). The judgment as to this plaintiff in error is found on pages 336 and 337. The judgment as to this plaintiff in error was that the plaintiff take nothing by reason of his cause of action and that the judgment be rendered in favor of C. L. Harris, as executor of the last will and testament of T. A. Kramer, that he go hence without day and that he recover his costs from the plaintiff. All of the other cases here on writs of error were tried before the Court without a jury and submitted on the evidence introduced in the G. L. Ramsey case, as found in the transcript of the record of Nos. 407, 408, pages 1 to 290, inclusive, and the additional evidence as to the amounts of the various deposits. In each of the cases tried before the Court the Court made separate findings against the separate defendants and rendered a separate judgment against the defendants other than this plaintiff in error.

In the case of the Ramsey Petroleum Company a separate judgment was rendered against C. L. King for the sum of $27,211.96, with interest, and a similar judgment rendered against H. F. Ferry; also one against A. B. Ewing and one against L. D. Hadley for a like amount.

The Court made a special finding as to T. A. Kramer, as follows:

> "The Court further finds that at the time of the making of the deposits set out in the plaintiff's amended petition that by reason of the physical and mental incapacity of T. A. Kramer that said T. A. Kramer was unable to make any examination of the books and records of the Butler County State Bank of Eldorado, Kansas, and had no personal knowledge of the making of such deposits, and that by reason of such physical and mental incapacity did not assent to the reception of such deposits by said bank, and that against the defendant C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, that plaintiff is not entitled to recover in this action and that such defendant should recover judgment against the plaintiff for costs herein expended."

In each of the other cases the trial court made similar findings and rendered similar judgments in favor of this plaintiff in error. From the various judgments rendered in favor of this plaintiff in error the various plaintiffs appealed to the Supreme Court of the State of Kansas, where it was contended by them that the incapacity of Kramer constituted no defense and that under the provisions of Section 9-163, Revised Statutes of 1923, if he did not examine, he was conclusively held to have knowledge of the condition of the bank and could not be heard to have any excuse or reason for such failure to examine, while this plaintiff in error contended that Section 9-163

of the Revised Statutes, if so construed, was in violation of the Fourteenth Amendment to the Constitution of the United States, in that, so construed, it deprived him of property without due process of law and denied to him the equal protection of the law. He also contended that Section 9-164 was in violation of the Fourteenth Amendment to the Constitution of the United States for the same reason.

The Supreme Court of the State of Kansas held with the appellants in each of the cases, holding that the special defense of incapacity was unavailing, held that the instructions of the Court, Nos. 22, 23, 24 and 25 were each erroneous and held, as stated in the motion of the defendants in error to dismiss these writs of error, that the fact that the statutes hold the director to possess knowledge of the insolvency or the failing circumstances of the bank and does not permit him to show any excuse for failure to examine, does not deprive him of property without due process of law and does not deny him the equal protection of the law, and held that when insolvency or failing circumstances of a bank is established as a fact, then knowledge of that fact is held to the director if he failed to discharge the duty imposed by the statute; that when T. A. Kramer accepted the office as director of the Butler County Bank he accepted it subject to all the requirements, obligations and liabilities imposed by the statute. That the prohibition and requirements of the statutes are positively mandatory; that failure to conform to the rule of conduct laid down in the statute imposed the liability thereby created and from which there is no escape. This is clearly set out in the argument of the defendants in error on their motion to dismiss.

The Supreme Court of the State of Kansas also held, as stated on page 12 of such argument, that an officer or

director charged with a violation of the statute has the right to defense on the issue of insolvency or failing circumstances, but he does not have the right to set up his ignorance occasioned by failure to discharge the duty imposed by statute as a defense against the liability thereof, and held as stated on page 13 of said brief, that when the State of Kansas enacted the provisions of the statute hereinbefore set out, it laid down the yardstick by which the liability of a director or officer of a bank was to be measured, and that such statute contained the rule by which to measure the right to recover from directors for loss occasioned from violation of the duty imposed by statute. That it mattered not from what circumstances such violation arose.

It was contended by this plaintiff in error that such construction of the statute deprived his decedent's estate of property without due process of law and denied to him the equal protection of the law.

The Supreme Court of the State of Kansas, holding in substance as above set out, reversed the judgment of the District Court of Butler County Kansas, in each of the cases in favor of this plaintiff in error, with instructions to the lower court to set aside such judgments and render a judgment in favor of each of the plaintiffs in the trial court, and it is from such judgments that these writs of error are prosecuted.

SUMMARY.

Writs of Error Not Frivolous.

The first two grounds for dismissal involve the question of whether a substantial federal question is involved. A case coming to the United States Supreme Court from a state court on a writ of error will not be dismissed as frivolous or as foreclosed by a former decision when analysis of these decisions is necessary.

> Louisville and Nashville Railroad Company v. Melton, 218 U. S. 36.

A federal question is not frivolous so as to require dismissal of a writ of error seeking to present it to the Supreme Court of the United States, if it requires analysis and exposition for its decision.

> Milheim et al. v. Moffatt Tunnel Improvement Dist. et al., 262 U. S. 710, 67 L. Ed. (U. S.) 119.

Section 9-164 of the Revised Statutes of Kansas for 1923 is unconstitutional as in violation of the Fourteenth Amendment to the Constitution of the United States, because it deprives persons, and particularly this plaintiff in error and his decedent's estate, of property without due process of law and denies equal protection of law by seeking to create a prima facie presumption of assent by proof of a fact entirely unrelated to the main fact sought to be established.

> Railway Company v. Turnipseed, 219 U. S. 35;
> Hawes v. Georgia, 258 U. S. 1;
> Manning v. John Hancock Mut. L. Ins. Co., 100 U. S. 693;

Luria v. United States, 231 U. S. 9-25;
McFarland v. American Sugar Co., 241 U. S. 79;
Bailey v. Alabama, 219 U. S. 219.

Section 9-164 of the Revised Statutes of Kansas for 1923 is unconstitutional and violative of the Fourteenth Amendment in that it deprives persons, and particularly this plaintiff in error and his decedent's estate, of property without due process of law by creating a presumption which is based upon a presumption.

5 C. J. 811;
Welch v. Sackett, 12 Wis. 243-257;
Jewell v. Jewell, 84 Me. 304-307, 24 Atl. 858;
Hanscom v. Home Ins. Co., 92 Me. 333, 339, 38 Atl. 324;
Patterson v. Stewart, 41 Minn. 84, 94, 42 N. W. 926;
22 C. J. 84;
Railroad Co. v. Baumgartner, 74 Kans. 148;
United States v. Ross, 92 U. S. 281;
Manning v. John Hancock Mut. L. Ins. Co., 100 U. S. 693, 10 Ann. Cases 1097;
Cunard Steamship Co. v. Kelley, 126 Fed. 610, 66 C. C. A. 533;
10 R. C. L. 870;
Duncan v. Railroad Co., 82 Kans. 230.

Section 9-163 of the Revised Statutes of Kansas for 1923, as construed by the Supreme Court of the State of Kansas in these cases, violated the provisions of the Fourteenth Amendment to the Constitution of the United States as to this plaintiff in error in that it required the decedent of this plaintiff in error to do the impossible.

"Impossibilium Nulla Obligatio Est," Wharton Legal Lexicon;
31 C. J. 258;

First Natl. Bank of Belle Plaine v. McConnell, 14 L. R. A. (n. s.), 616-618, 114 N. W. 1128;
"Impotentia Excusat Legem," Bouvier Law Dictionary;
Bayer v. Hoboken, 40 N. J. L. 152, 155;
Parker's Estate, 19 Pa. Co. 606-608;
"Lex Non Cogit Ad Impossibilia," Broom's Legal Maxims, *238;
"Lex Non Intendit Alliquid Impossibile," Black's Law Dictionary.
36 C. J. 1048;
Williams v. Hays, 157 N. Y. 541, 43 L. R. A. 253, 255;
United States v. Kirby, 7 Wall. 482;
People v. McRoberts, 62 Ill. 38;
Fusz v. Spaunhorst, 67 Mo. 256;
St. Louis and S. F. Ry. Co. v. Evens and Howard Brick Co., 85 Mo. 307-329;
Donaldson v. Wood, 26 Wend. 399;
Henderson v. Mayor of New York, 92 U. S. 268;
In re Leong Yick Dew, 19 Fed. 490, 495;
Runyan et al. v. Culver, L. R. A. (1916 F) 3;
Wheeler v. Conn. Mut. Life Ins. Co., 82 N. Y. 543;
Berg v. Erickson, 234 Fed. 817, L. R. A. (1917 A) 648 651;
Usher v. Hiatt, 18 Kans. 195;
Briggs v. Spaulding, 141 U. S. 132.

Section 9-163 of the Revised Statutes of Kansas for 1923 violates the Fourteenth Amendment to the Constitution of the United States because it creates a conclusive presumption of knowledge on account of failure to examine the bank. This was not within the power of the Kansas Legislature.

Bailey v. State of Alabama, 219 U. S. 219;
Cooley on Constitutional Limitations (5th Ed.), 453;

Choctaw O. & G. R. Co. v. Harrison, 235 U. S. 292, 59 L. Ed. 234;
Galveston H. & S. A. R. Co. v. Texas, 210 U. S. 217;
Louisville & Nashville Ry. Co. v. Melton, 218 U. S. 36;
Luria v. United States, 231 U. S. 9, 58 L. Ed. 101;
Larson v. Dickey, 42 Am. Rep. 595;
Milheim et al. v. Moffatt Tunnel Imp. Dist. et al., 262 U. S. 710, 67 L. Ed. 1194;
Meyer v. Berland, 39 Minn. 438, 12 Am. St. Rep. 663, 40 N. W. 513;
McFarland v. American Sugar & Refining Co., 241 U. S. 79, 36 Sup. Ct. Rep. 498;
Orient Inc. Co. v. Daggs, 172 U. S. 557, 43 L. Ed. 552;
Railroad Co. v. Simonson, 64 Kans. 802;
Railway Co. v. Payne, 83 Ark. 816, 34 Am. Rep. 55;
Railway Co. v. Parks, 32 Ark. 131;
Railway Co. v. Turnipseed, 219 U. S. 35;
Schlesinger v. Wisconsin, 270 U. S. 230, 70 L. Ed. 557;
Vega S. S. Co. v. Elevator Co., 74 Am. St. Rep. 484;
Yee Hem v. U. S., 260 U. S. 178, 69 L. Ed. 904;
Ziegler v. Railroad Co., 58 Ala. 599;
6 R. C. L., 453, 462.

Questions of fact are not open in the Supreme Court of Kansas on appeal.

Bayer v. Cockerill, 3 Kans. 282;
Mueller v. Campbell, 95 Kans. 420;
Bartells v. School District, 89 Kans. 233;
Bateman et al. v. Preisser et al., 123 Kans. 217;
Reeves v. Sroade, 124 Kans. 423.

A writ of error to this Court would not lie from the decision of the Supreme Court of Kansas in the case of Ram-

sey Petroleum Company v. Adams, 119 Kans. 844, because that was not a final decision.

Georgia Ry. & Power Co. et al. v. Town of Decatur, 262 U. S. 432.

There is no want of necessary parties as plaintiffs in error.

Winters v. U. S., 207 U. S. 564;
Gilfillan v. McKee, 159 U. S. 303;
Henrick v. Patrick, 119 U. S. 156;
Germain v. Mason, 12 Wallace 259;
Cox et al. v. U. S., 6 Peters 172;
Alsop v. Conway et al., 188 Fed. 568 (C. C. A. 6th);
Hightower et al. v. American National Bank of Macon, 276 Fed. 371 (C. C. A. 5th);
Adamson et al. v. Blackrock P. & I. Co., 12 Fed. (2nd) 437 (C. C. A. 9th);
Love v. Export Storage Co. et al., 143 Fed. 1 (C. C. A. 6th).

ARGUMENT.

Section 9-164 of the Revised Statutes of Kansas for 1923 is unconstitutional and is in violation of the Fourteenth Amendment to the Constitution of the United States because it deprives persons, and particularly this plaintiff in error and his decedent's estate, of property without due process of law and denies equal protection of law by seeking to create a prima facie presumption of assent by proof of a fact entirely unrelated to the main fact sought to be established.

Section 9-164, Revised Statutes of Kansas for 1923, provides that proof of insolvency shall be prima facie evidence both of knowledge of the insolvency of the bank and of assent to the reception of deposits.

Every man is presumed to do his duty. The law does not presume that anyone charged with an obligation violates the obligation. The law forbids the reception of deposits when it is known that the bank is insolvent and makes every officer assenting to the reception of deposits when he knows the bank insolvent individually liable for such deposits so received.

It is, therefore, to be presumed that an officer and director of a bank will not violate this provision of this statute. When proof is introduced tending to show that the bank was insolvent at the time of the reception of the deposit in question, such proved fact may tend to prove that the officer or director of the bank had knowledge of its condition, but it has no tendency to prove that he assented to the reception of deposits. The natural presumption would be that an officer, who is presumed to do his duty, would not assent to the reception of deposits when he knew that the bank was insolvent.

Certain facts may tend to prove certain other facts, but it is essential that such fact shall have a rational connection with the fact to be proved; that is, there must be a rational connection between the fact proved and the ultimate fact presumed. The inference that one fact may prove another shall not be so unreasonable as to be arbitrary. In what way does the mere fact that a bank was insolvent at a certain time tend to prove that the officer or director of the bank violated his oath of office and assented to the unlawful reception of deposits? Applied to the cases before this Court, what tendency does the mere fact that in the month of March, 1923, when certain deposits were received in the Butler County State Bank, the bank was insolvent have to prove that T. A. Kramer, who was five hundred miles away, confined to his bed under the influence of opiates, mentally and physically incapacitated from transacting any business of any kind, then assented to the reception of such deposits?

In the case of Railway Company v. Turnipseed, 219 U. S. 35, at page 43 of the opinion, it is said:

> "That the legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal protection of the law. It is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense to the main fact thus presumed."

To the same effect is the holding in Luria v. United States, 231 U. S. 9-25.

In the case of McFarland v. American Sugar Company, 241 U. S. 79, it was held that a Louisiana statute, creating the rebuttable presumption that any person systematically paying in that state a less price for sugar than he paid in another state was a party to a monopoly or conspiracy in restraint of trade, was unconstitutional under the Fourteenth Amendment, as being so arbitrary as to be beyond possible justice, the presumption created having no foundation except an intent to destroy, and there is no rational connection between the fact proved and the ultimate fact presumed.

In the case of Hawes v. Georgia, 258 U. S. 1, on page 4 of the opinion, it is said:

> "In Hawkins v. Bleakly, 243 U. S. 210-214, it is said: 'The establishment of presumptions and all rules respecting the burden of proof is clearly within the domain of the state governments, and that a provision of this character not unreasonable in itself and not conclusive of the rights of the party does not constitute a violation of due process of law (Mobile, Jackson & Kansas City R. R. Co. v. Turnipseed, 219 U. S. 35-42).' Undoubtedly there must be a relation between the two facts (Bailey v. Alabama, 219 U. S. 219; McFarland v. American Sugar Refining Co., 241 U. S. 79); that is, if one may be evidence of the other, there must be connection between them—a requirement that reasoning insists on and necessarily the law."

Section 9-163 of the Revised Statutes of Kansas for 1923, as construed by the Supreme Court of the State of Kansas in these cases, violates the provisions of the Fourteenth Amendment to the Constitution of the United States as to this plaintiff in error in that it required the decedent of this plaintiff in error to do the impossible.

The Supreme Court of the State of Kansas held that the provisions of section 9-163, which provide that it shall be the "duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and, if possible, know its condition; and upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances," was mandatory and compulsory, that no excuse for failure to examine would avail an officer, or director; and that the fact that the decedent of this plaintiff in error was sick and unable, mentally and physically, to make any examination of the bank, or to attend to any business matter in connection with the bank, or to come to Eldorado, where the bank was located, for the purpose of making an examination, furnished no excuse whatever for his failure to examine; that his failure under such conditions charged him with knowledge of the insolvent condition of the bank or that it was in failing circumstances at the time each deposit was made; and that he would not be permitted to offer any evidence showing his condition or any excuse whatsoever for his failure to examine.

This holding of the Supreme Court required the decedent of this plaintiff in error to do the impossible. It interpreted the statute so that the Legislature by this provision of the act was held to have required the impossible. This neither the Court nor the Legislature can require.

Such holding violates the provisions of the Fourteenth Amendment to the Constitution of the United States, and it violates the fundamental principles of the common law and every principle of justice.

The universal rule is, or was until the Supreme Court of Kansas spoke, that where an obligation or duty is imposed upon a person by law, he will be absolved from liability for nonperformance if such nonperformance was caused by an act of God or because of impossibility.

The legal maxims, "Impossibilium nulla obligatio est," "Impotentia excusat legem," "Lex non cogit ad impossibilia" and "Lex non intendit alliquid impossibile," are universally recognized.

In Broom's Legal Maxims it is said:

> "The law in its most positive and peremptory injunctions is understood to disclaim, as it does in its general aphorisms, all intention of compelling to impossibilities and the administration of laws must adopt that general exception in the consideration of all particular cases."
>
> "The law intends what is agreeable to reason; it does not suffer an absurdity. Impossibility is an excuse in law and there is no obligation to perform impossible things."
>
> Williams v. Hays, 157 N. Y. 541, 43 L. R. A. 253-255.

"Impossibilium nulla obligatio est. The law never requires the doing of an impossible thing (Dow v. State Bank, 88 Minn. 355, 93 N. W. 121), though it often awards damages for a failure to perform express contract stipulations, where performance was rendered impossible by reason of intervening overpowering causes other than an act of God (9 Cyc Law

and Proc. 627) but the principle involved in cases of that kind does not apply to duties or obligations arising by implication of law (Paradine v. Jane, Aleyn, 26; School District No. 1 v. Daughy, 25 Conn. 530, 68 Am. Dec. 371). In other words, a person will be relieved from the performance of a duty imposed upon him by law where the performance is rendered impossible by reason of causes for which he was not responsible, where he would not for similar reasons be relieved from express contract stipulations. * * * The duty to present them for payment is one imposed by law, not by express contract, and compliance therewith being impossible, plaintiff's failure to present them is not fatal to its right to recover thereon."

First National Bank of Belle Plaine v. McConnell, 14 L. R. A. (n. s. 616-618, 114 N. W. 1128 (Minn).

"To this point of the investigation, therefore, the familiar maxim applies, 'Lex non intendit alliquid impossibile.' The reason of the law in such cases should prevail over its letter and general terms should be so limited in their application as not to lead injustice, oppression or an absurd consequence, the presumption being indulged that the lawmakers intended exceptions to language which otherwise would lead to such anomalous results."

U. S. v. Kirby, 7 Wall. 482;
People v. McRoberts, 62 Ill. 38;
Fusz v. Spaunhorst, 67 Mo. 256;
St. Louis & S. F. Ry. Co. v. Evens & Howard Brick Co., 85 Mo. 307-329.

"If, then, it is impossible to comply with the condition, the impossible condition must be regarded as not intended as to this class of laborers; or if intended, it must be void. The law requires nothing impossible —Lex non cogit ad impossibilia (Bouv. Law Dict.,

'Maxims', Broom, Max. 242), and Lex non intendit aliquid impossibile (Bouv. Law Dict.)—the law intends not anything impossible—are among the most venerable maxims of the law. In a statute, 'No text imposing obligations is understood to demand impossible things' (Sedg. St. Law 191). 'Provisions in acts of Parliament are to be expounded according to the ordinary sense of the words, unless such construction would lead to some unreasonable result, or be inconsistent with, or contrary to, the declared or implied intention of the framer of the law, in which case the grammatical sense of the words may be modified, restricted, or extended to meet the plain policy and provision of the act' (Dwarris' St. 582). The rule is to construe words 'in their ordinary sense, unless it would lead to absurdity or manifest injustice; and if it should so vary them as to avoid that which certainly could not have been the intention of the Legislature, we must put a reasonable construction upon the words' (Id. 587). (See Donaldson v. Wood, 22 Wend. 399; Lake Shore Ry. Co. v. Roach, 80 N. Y. 339.) 'All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will always, therefore, be presumed that the Legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over the letter' (U. S. v. Kirby, 7 Wall. 486). 'In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect. * * * To require a heavy and almost impossible condition to the exercise of this right, with the alternative of payment of a small sum of money, is, in effect, to demand payment of that sum' (Henderson v. Mayor of New York, 92 U. S. 268)."

In re Leong Yick Dew, 19 Fed. Rep. 490-495.

In the case of Briggs v. Spaulding, 141 U. S. 132, this Court says on page 155 of the opinion:

> "Charles T. Coit had been the first cashier of the bank and was elected a director in 1870. He was its president from June, 1879, to the date of his death, December 11, 1881. On October 3, 1881, a meeting of the board of directors was held, at which Charles T. Coit, Francis E. Coit, Vought and Lee were present. Cushing, who had resigned on the 24th of September, was absent. It appears that at this meeting a resolution was adopted giving Charles T. Coit, the president, a leave of absence, on account of ill health, for one year. No one was elected president prior to January 10, 1882, in his place. There is no doubt of the severity of his illness, and the necessity for his absence; but it is contended that the resolution referred to absence as president and not as director, and that no power existed to allow leave of absence to a member of the board, and so that the resolution should be limited to excuse him from attendance at the bank, but not to permit him to leave the city; and it is said that if he wished to be absolved from responsibility while absent in search of restored health, he should have resigned. If such were the rule, we apprehend that moneyed corporations would find extreme difficulty in obtaining proper persons to act as directors. But it is not the rule. Mr. Coit was guilty of no want of ordinary care in acting upon the leave of absence, and is not to be held because he did not resign. Invalids are permitted to indulge in the hope of recovery, and are not called upon by reason of illness to retire at once from the affairs of this world and confine themselves to preparation for their passage into another. There was here no neglectful abandonment of duty from October 3 to December 11, and the decree in favor of the administrators of Charles T. Coit was properly rendered."

Section 9-163 of the Revised Statutes of Kansas for 1923, violates the Fourteenth Amendment to the Constitution of the United States, because it creates a conclusive presumption of knowledge on account of failure to examine.

Under this statute the liability is imposed upon a director not for failure to make an examination into the affairs of a bank, but for receiving or assenting to the reception of deposits when he knew that the bank was at the time insolvent—the liability being based upon assent to the reception of deposits when the person assenting knew the bank was insolvent. In order for a plaintiff to recover under this statute, he must prove, first, that the bank was insolvent at the time the deposit was made; second, that the director or party sought to be charged knew that it was insolvent; and, third, that knowing that it was insolvent he received or assented to the reception of the deposit. It provides that it shall be unlawful for an officer or director to assent to the reception of the deposit by his banking institution after he shall have knowledge of the fact that it is insolvent or in failing circumstances. It does not seek to impose liability upon an officer or director of a bank for failure to examine a bank, and, if it did, the officer or director charged would be excused if examination by him was impossible by reason of things beyond his control. But the statute does not seek to create any liability except where one assents when he has knowledge. Therefore, that portion of the statute which says that upon failure to discharge the duty of examining the bank, a director or officer shall, for the purpose of the act, be held to have knowledge of the insolvency of such bank or that it was in failing circumstances, as it was interpreted by the Supreme Court of this state and as claimed it should be interpreted in the brief of the

defendant in error, creates a conclusive presumption of knowledge. This is not within the power of the Legislature to do. The plaintiff in error in this case had a right to show that his decedent did not have knowledge that the bank was insolvent at the time of the reception of the deposits. This right was granted to each of the other directors and officers sued, because they had made examination, but it was denied to this plaintiff in error because the Court found that his decedent had not examined and that such failure to examine was because of his mental and physical condition which rendered him incapable of making an examination. As stated on pages 11 and 12 of the brief of the defendant in error on this motion, this statute as interpreted by our state Supreme Court means that an officer and director charged with a violation of a statute has the right to defense on the issue of insolvency or failing circumstances, but does not have the right to set up his ignorance occasioned by failure to discharge the duty imposed by statute as a defense against the liability thereof. Under this interpretation, an officer or director may examine the bank and may show that he did not have knowledge of the insolvent condition of the bank, while another officer and director is denied the right of showing that he did not have knowledge of the condition of the bank at the time the deposit in question was received by showing that at the time of the reception of the deposits and for many months prior thereto, he had been totally paralyzed, unable to exercise any of his body and mental faculties.

If this contention of the defendant in error is correct, if the position taken by the Supreme Court of the State of Kansas is correct, if the interpretation put upon this statute by the Supreme Court of the State of Kansas is correct, then no officer or director who fails to examine a

bank can ever show that he did not have knowledge of the insolvency of the bank. If one is an officer and director of a bank and the bank is perfectly solvent today and such officer and director becomes insane and, while insane, the bank becomes insolvent, such insane person, if he failed to examine the bank cannot be permitted to show that he did not examine because he was insane, but if by any chance he does make an examination of the bank, then he may show that he did not have knowledge of its condition because at the time he made the examination he was so insane that he could not discover the bank's condition. In these cases there was no dispute in the testimony as to the physical and mental condition of T. A. Kramer; but, because he did not examine while in this condition, he was, by the decision of the state Supreme Court, precluded from showing any set of facts which showed that he did not have knowledge that the bank was insolvent, and because he did not examine into the affairs of the bank the state Supreme Court held that the trial court could not take into consideration any facts or circumstances which might tend to show he did not have knowledge. In other words, because he failed to examine the door was shut against him on the question of knowledge. If this decision stands, a trial court is bound to say, in all cases that may hereafter come before it, to a director who did not examine:

> "It is true that nine months before the deposit was made you examined the bank and you did not find it to be insolvent and did not know it was insolvent, but you were immediately taken seriously sick, and that sickness was of such a nature as to render you incapable, mentally and physically, of making any examination into the affairs of the bank or of learning anything about its condition, yet I must hold you to

> have had knowledge of the insolvent condition of the bank, because you failed to examine, for the Supreme Court says that the statute in question means that if you have so failed, even though such failure was caused by an act of God, or by causes entirely without your control, you are still conclusively bound by such failure to have knowledge."

Under this statute there can be no recovery unless the parties suing establish that the director or officer sued had knowledge of the insolvent condition of the bank when he assented to the reception of the deposit. The action is not an action on contract, but it is in the nature of an action sounding in tort. If knowledge is an essential thing to prove in order to recover under this statute, then want of knowledge is an essential thing for an officer or director to establish in order to escape liability, and if established the result is that he escapes liability; therefore, knowledge and want of knowing being facts to be established, it is not within the power of the Legislature to make any fact conclusive of the ultimate fact to be established. To do so is for the Legislature to infringe on the rights of the Court and to try a case by legislative enactment. It has been repeatedly held that it is not within the power of the Legislature to create a conclusive presumption.

The Supreme Court of Kansas held that a statute which made the specification of weights in bills of lading issued by railroad companies for hay, etc., shipped over their lines, conclusive evidence of the correctness of such weight was unconstitutional, because denying to the companies due process of law and because wrongfully depriving the courts of the judicial power to determine the weight and sufficiency of evidence.

Railroad Company v. Simonson, 64 Kan. 802.

The Supreme Court of Arkansas held in Railway Co. v. Payne, 83 Ark. 816, 34 Am. Rep. 55, that

> "the Legislature cannot prescribe a rule of conclusive evidence."

In Cairo Railroad Company v. Parks, 32 Ark. 131, the Court said:

> "The Legislature may declare what shall be received as evidence, but it cannot make that conclusively true which may be shown to be false; that all events if such facts are necessary to show that the substantial rights of property are to be effected and he is made to lose his property."

In Meyer v. Berlandi, 39 Minn. 438, 12 Am. St. Rep. 663, 40 N. W. 513, it was said:

> "A man cannot be thus deprived of his property without his consent. The Legislature may doubtless establish rules of evidence; but to enact a law making evidence conclusive which is not so necessarily in and of itself, and thus preclude a party from showing the truth, would be nothing short of confiscation of property and a destruction of vested rights without due process of law."

In Cooley on Constitutional Limitations (5th Ed. 453), it is said:

> "But there are mixed bounds to the power of the Legislature over this subject which cannot be exceeded. As to what shall be evidence, and which party shall assume the burden of proof in civil cases, its authority is practically unrestricted, so long as its regulations are impartial and uniform; but it has no power to establish rules which, under pretense of

regulating the presentation of evidence, go so far as altogether to preclude a party from exhibiting his rights."

In Railroad Company v. Turnipseed, 219 U. S. 35, Justice Lurton, in the opinion, says:

"That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal protection of the law it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense to the main fact thus presumed.

"If a legislative provision not unreasonable in itself prescribing a rule of evidence, in either criminal or civil cases, does not shut out from the party affected a reasonable opportunity to submit to the jury in his defense all of the facts bearing upon the issue, there is no ground for holding that due process of law has been denied him."

In Luria v. United States, 231 U. S. 9, 58 L. Ed. 101, it was held:

"Constitutional rights are not invaded by the declaration of Section 15 of the Naturalization Act of June 29, 1906, that taking up a permanent residence in a foreign country within five years after the issuance of a certificate of citizenship shall be considered prima facie evidence of the lack of intention to become a permanent citizen of the United States at the time of the application for citizenship, which, in the

absence of countervailing evidence, shall be sufficient to warrant the cancellation of the certificate as fraudulent, since this provision prescribed a rule of evidence, not of substantive right."

In Railroad v. Turnipseed, 219 U. S. 35, supra, it is said:

"The law of evidence is full of presumptions either of fact or law. The former are, of course, disputable and the strength of any inference of one fact from proof of another depends upon the generality of the experience upon which it is founded."

To the same effect was the holding in Yee Hem v. U. S., 219; it was said:

"A constitutional prohibition cannot be transgressed indirectly by creating a statutory presumption any more than by direct enactment."

In Zeigler v. Railroad Company, 58 Ala. 599, it was said:

"Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty or property, in its most comprehensive sense; to be heard by testimony or otherwise; and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact, or liability be conclusively presumed against him, this is not due process of law."

In 6 R. C. L. 453, it is said:

"Due process of law clearly implies the right of the person affected thereby to be present before the tribunal which pronounces judgment concerning his life, liberty or property to be heard by testimony or other-

wise and to have the right of controverting by proof every material fact which bears upon the question or right in the matter involved."

In Larson v. Dickey, 42 Am. Rep. 595, page 606 of the opinion, it is said:

"We apprehend that it is beyond the power of the Legislature to restrain a defendant in any suit from setting up a defense to an action against him. Due process of law not only requires that a party shall be properly brought into court, but that he shall have the opportunity when in court to establish any fact which according to the usages of the common law or provisions of the Constitution would be a protection to his property."

In 6 R. C. L. 462, it is said, speaking of the power of the Legislature:

"As to what shall be evidence and who shall assume the burden of proof, its power is unrestricted so long as its rules are impartial and uniform; but it has no power to establish rules which, under pretense of regulating evidence, altogether prohibit a party from exhibiting his rights, since this would substantially deprive him of due process of law. A conclusive presumption cannot be established which would overrule the essential facts and thereby preclude a party from asserting the truth."

In Vega S. S. Company v. Elevator Company, 74 Am. St. Rep., page 484, it was said on page 486:

"But is it competent for the Legislature to make the weight thus ascertained absolutely conclusive? We are of the opinion that it is not. The Legislature cannot in this manner provide for the arbitrary exercise of power, so as to deprive a person of his day in court

to vindicate his rights. And the law which closes his mouth absolutely when he comes into court is the same, in effect, as the law which deprives him of his day in court. (See Cooley's Constitutional Limitations, 6th Ed., 452; 6 Am. & Eng. Ency. of Law, 2d Ed., 1050; Graves v. Northern Pac. R. R. Co., 5 Mont. 556, 51 Am. Rep. 81; Johns v. State, 55 Md. 350; Wantlan v. White, 19 Ind. 470)."

The statute in question was originally before the Supreme Court of Kansas on an appeal in these cases from the District Court of Butler County from a judgment sustaining a demurrer to the defendant's defense that the statute was unconstitutional as in violation of the Fourteenth Amendment to the Constitution of the United States, in that it deprived the defendants of property without due process of law and denied to them equal protection of the law, and the Court held:

"In the statute (R. S. 9-163, 9-164) fixing liability of officers and directors for the unlawful reception of deposits by an insolvent bank under their control neither the due-process clause of the Federal Constitution nor the state constitutional guaranty of the right to a jury trial is violated by the statutory declaration that, upon failure of any officer or director to examine the bank, he shall be held to have had knowledge of the insolvency of the bank or that it was in failing condition at the time the deposits were unlawfully received by the bank."

On page 848 of the opinion it is said:

"Is this imposition of liability for negligence and official delinquency at odds with the Fourteenth Amendment? Defendants so contend; they cite texts and authorities, including our own cases, like Railway Company v. Simonson, 64 Kan. 802, 70 Pac. 881,

and Petersilie v. McLachlin, 80 Kan. 176, 101 Pac. 1014, to the effect that due process of law is denied by a statutory declaration that such and such facts shall be conclusive proof of something required to be established in a judicial proceeding when such facts are not of such inherently probative character. With this general doctrine of the cases relied on there need be no quarrel; certainly this Court has no disposition to disturb legal principles of such fundamental worth (12 C. J. 1234; 6 R. C. L. 462; 2 Wigmore on Evidence, 2nd Ed., 1016, et seq.). But we cannot agree that the statutory provision under present scrutiny is justly subject to the criticism leveled against it. The provision reads. 'And upon failure of any such person (officer or director) to discharge such duty (to examine the bank) he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances.' This is not an arbitrary edict of the Legislature making evidence out of facts which are without inherent evidential significance, nor an arbitrary perversion of the rules of evidence. It is rather a statutory declaration of substantive law. We have many such rules of substantive law touching civil liability. Analogous liabilities are imposed by substantive law, even where there is little or no element of actual wrongdoing or negligence on the part of those subjected thereto. Such is the plight of stockholders of an insolvent bank. So, too, a business partner is liable as a matter of law for many acts and delects that may have been committed without his knowledge or assent, and even in violation of his wishes and instructions. Nothing is more common than the imposition of liability upon a principal for the acts, contracts or torts of his agent when done under color of his agency, although the principal may have been in no sense morally culpable for such acts" (Ramsey Petroleum Co. v. Adams, 119 Kan. 841).

Neither state courts nor Legislatures, by giving a statute a particular name or by the use of a particular form of words, can take away the duty of this Court to consider its real nature and effect (Galveston H. & S. A. R. Co. v. Texas, 210 U. S. 217; Choctaw O. & G. T. Co. v. Harrison, 235 U. S. 292, 59 Law Ed. 234).

In support of the construction placed upon the statute in question by the Supreme Court of the State of Kansas, reliance is placed, and the decision largely based, upon the decision in Orient Ins. Co. v. Daggs, 172 U. S. 557, 43 L. Ed. 552. The statute involved in that case provided that:

> "In all suits upon policies of insurance against loss or damage by fire hereafter issued or renewed the defendant shall not be permitted to deny that the property insured thereby was worth at the time of the issuing of the policy the full amount insured therein on said property; and in case of total loss of the property insured the measure of damage shall be the amount for which the same was insured, less whatever depreciation in value below the amount for which the property is insured the property may have sustained between the time of issuing the policy and the time of the loss, and the burden of proving such depreciation shall be upon the defendant."

In that case the Court recognized the inability of the Legislature to make an altimate question of fact conclusively proved by the proof of another fact. We have examined the authorities presented by the defendants in error in their motion to dismiss upon the first two grounds alleged and we have been unable to find anything that sustains the construction put upon this statute by the Supreme Court of Kansas as constitutional. The first line

of authorities cited are on the proposition that the business of banking, being impressed with a public interest, may be regulated by the state, and that the state may then take the business of banking under its control in so far as that business is conducted by banking corporations deriving their authority and existence from the state. With this general proposition we have no quarrel, but the power of the state to regulate banking business does not confer upon the state the power to deprive officers and directors of a banking corporation of property without due process of law, or to deny to them equal protection of the law, nor to pass legislation which prohibits such officers from having a right in actions against them to present evidence tending to show they are not liable.

The statute in question seeks to create a liability upon officers and directors of a bank where no such liability existed at common law. A reading of the sections involved shows that it was intended to impose liability upon officers and directors of a bank who should receive deposits or assent to the reception of deposits when they knew that the bank was insolvent or in failing circumstances. No liability is imposed upon one who fails to examine a bank, but the statute attempts to make a failure to examine a bank conclusive proof that the director knew at the time of the reception of the deposit in question that the bank was insolvent or in failing circumstances.

Under the interpretation put by the Supreme Court of Kansas upon Section 9-163 of the Revised Statutes of Kansas 1923, which interpretation is clearly set forth in the brief of the defendants in error on the motion to dismiss or affirm, such statute does not make a failure to

examine a bank prima facie evidence of knowledge, but makes it conclusive on the question of knowledge. In effect, it says to directors and officers who may be sued under the statute:

> "Under this statute all of you who received or assented to the reception of deposits by your bank when you knew your bank was insolvent or in failing circumstances are individually liable for all such deposits, and you who fail to examine your bank shall, for the purpose of this action, be held to have had knowledge that the bank was insolvent or in failing circumstances. It makes no difference what caused your failure to examine. You may have failed because you were during the period involved mentally incapacitated from making an examination. You may during the period involved have been confined to your bed by typhoid fever and in the delirium of typhoid fever. You may during the time involved have been lying unconscious from the effect of a paralytic stroke. During the period involved you may have been suffering intense physical pain and under the influence of opiates and unable to take any part in business affairs. Acts of God may have intervened to prevent you from making an examination into the affairs of the bank. However, these things will avail you nothing. You will not be permitted to show any of these things in order to show want of knowledge or for the purpose of showing that it was impossible for you to examine into the bank. The officers and directors who did make an examination will be permitted to show that they did not know that the bank was insolvent. They will be permitted to show that it was impossible from any examination of the bank to discover the condition of the bank. They will be permitted to put on expert witnesses to prove that no examination into the affairs of the

bank, however thorough, would have disclosed the condition of the bank and may establish that it was impossible for officers and directors of a bank by any examination made or by any inquiry made to have learned of the condition of the bank at the time the deposits were received. They may be able to prove these facts by an overwhelming preponderance of the evidence, and yet the jury under this statute must find that you did know the bank was insolvent or in failing circumstances, while at the same time finding that it was impossible for the officers and directors of a bank, by any examination or inquiry, to have learned the condition of the bank at the time the deposits were received."

Clearly this statute bases the right to recover upon the assent to the reception of deposits by an officer or director of a bank when he knew that the bank was insolvent and then makes proof of the failure to examine conclusive as to the ultimate fact of knowledge, thus creating a conclusive presumption of one fact by proof of another fact, and giving to the officer or director failing to examine no right to rebut such presumption or to introduce any evidence tending to prove that he did not have knowledge. This the Legislature cannot do and this construction put upon this statute by the State Supreme Court violates the Fourteenth Amendment to the Constitution of the United States by depriving the plaintiff in error of the right to show that his decedent did not know of the insolvent condition of the bank, and of showing that any failure on his part to examine was caused by act of God or by reason of things beyond his control.

There is no want of necessary parties as plaintiffs in error.

In defendants in error's motion it is said that the cause of action stated against this plaintiff in error is the same

cause of action as that stated against H. F. Ferry, C. L. King, A. B. Ewing and L. D. Hadley, and that the cause of action in each case is a joint cause of action, and all defendants against whom judgment was allowed are jointly liable for the full amount. It is true that the same matters are charged against each defendant in each petition, but this does not make the cause of action joint. The statute in question provides that "Every person violating the provisions of this section shall be individually responsible for such deposits so received." Instead of there being a joint responsibility, there is an individual responsibility. Each officer or director must examine or fail to examine for himself. Each officer or director must assent to the reception of deposits or fail to assent for himself. There cannot be any joint liability.

These suits are based upon a statutory liability, and it would require a separate suit as to each officer or director were it not for the further provisions of the statute involved that provide: "In all suits brought for the recovery of the amount of any deposits received or debts so created, all officers, agents or managers of any such banking institution, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally."

But the fact that the officers and directors are joined as defendants does not prevent the proceedings from being in fact a separate proceeding against each defendant, because in order to recover, although all officers and directors are joined as defendants, a separate and distinct liability must be shown as to each defendant. And that was the procedure followed in all these cases. Each plaintiff endeavored to show a distinct liability as to each

defendant. What one defendant did or failed to do was of no importance on the question of liability as to any other defendant.

In each case two defendants, E. F. Adams and G. W. Lyon, were clearly shown to be not liable, because neither of them was an officer or director of the bank at the time in question, and no complaint is made as to their not being parties. A separate verdict and a separate finding was rendered in each case as to each defendant. Each finding and each verdict as to this plaintiff in error was to the effect that he was not liable. Each finding and each verdict as to Messrs. Ferry, King, Ewing and Hadley was to the effect that they were liable and a separate and distinct judgment for the full amount was rendered in each case against Messrs. Ferry, King, Ewing and Hadley, and a separate judgment was rendered in each case adjudging that there was no liability as against this plaintiff in error.

From the judgment rendered in favor of this plaintiff in error and E. F. Adams, each plaintiff in the court below prosecuted an appeal to the Supreme Court of Kansas. From each judgment rendered against Messrs. Ferry, King and Hadley, they each appealed. Mr. Ewing is not a party to the proceedings in the State Supreme Court, and Mr. Lyon is not a party to those proceedings.

The judgment of the State Supreme Court in each case was that the judgment in favor of this plaintiff in error be reversed, with directions to the District Court to enter judgment for the full amount against this plaintiff in error. All the other judgments were affirmed. Consequently, each judgment in the lower court in E. F. Adams' favor was affirmed, and she could have no interest in our writ of error. When we prosecuted our writs of error the

plaintiff in each case was, of course, a person vitally interested. But as to all other persons our interest as to the reversal of our judgment was ours alone. The interest that Mr. Ferry had in the judgment of the Supreme Court of Kansas was to attempt to reverse that portion of that judgment that affirmed the judgment below against him; and Mr. King and Mr. Hadley each had a similar interest as to the judgments in the court below against each of them. We could not ask Mrs. Adams to join with us in our writ of error, because she desired no relief. We could not ask Mr. Ferry, or either of the other parties mentioned, to join with us in our writ of error, because if he asked relief it would not be with reference to the reversing of the judgment against this plaintiff in error, but it would be with reference to the affirmance of the judgments against him. Further than that, a separate answer was filed by each defendant in each case. We presented alone the defense that T. A. Kramer was mentally and physically unable to examine the bank during the time in question, and that, therefore, the statutory presumption should not apply to him. This defense was made in connection with the defense that the statutes in question violated the Fourteenth Amendment to the United States Constitution. And a similar defense was made by no other defendant.

In the case of Gilfillan v. McKee, 159 U. S. 303, were involved suits in equity by a number of persons, setting up their various claims upon a certain fund. The decree was that one-half of the special fund should be paid to McPherson, executor, and the other one-half to Gilfillan and his associates; that the general fund should be distributed among three parties; a certain amount was allowed to Lamon for his services, and the claims of the others were disallowed. McPherson, executor, appealed

from so much of the decree as denied him participation in the general fund. Gilfillan and others appealed from the decree distributing the general fund and dismissing their cross bill; and other parties appealed. On page 312 of the opinion it is said:

> "The decree was several, both in form and substance, and the interest represented by each defendant was separate and distinct from that of the other. In such case any party may appeal separately to protect his own interest."

In the case of Hanrick v. Patrick, 119 U. S. 156, it is held that the mere fact that the judgment is joint is not controlling; that a judgment may be joint in form but severable in fact and in law.

In the case of Germain v. Mason, 12 Wallace 259, a suit was brought against Germain to recover balance due for work in building a house, and to enforce a mechanic's lien against the house and land. Twenty other persons were made parties as having or claiming some interest in the premises. The Court gave judgment against Germain in personam for the debt, with an order, if it could not be made out of him, the real estate was to be sold, and decided that the complainant's lien was superior to the claims of the other parties. And it was held that the writ should not be dismissed; that Germain had a separate distinct personal judgment against him for money in which the other defendants had no interest, and that he had a right to prosecute a writ of error in his own name without joining them.

In the case of Cox et al. v. United States, 6 Peters 172, two writs of error were sued out. In the lower court judgment was given against the estate of John Dick and

Nathaniel Cox jointly and severally for $20,000.00 and against Nathaniel Dick and James Dick for $10,000.00. It was held that this was a joint and several judgment; that all the defendants did not need to join in one writ; that it was proper for the defendants to sue out separate writs.

In the case of Winters v. United States, 207 U. S. 564, on page 574 of the opinion, it is said:

> "The rule which requires the parties to a judgment or decree to join in an appeal or writ of error, or by detaching from the right by some proper proceeding, or by their renunciation, is firmly established. But the rule only applies to joint judgments or decrees. In other words, when the interest of a defendant is separate from that of other defendants he may appeal without them."

In the opinion it is further said that the bill does not distinguish the acts of the defendants. (The same cause of action was stated against each as claimed by defendants in error here.) It is further said that the answer to the bill is joint and several and in effect avers separate rights, interests and actions on the part of the defendants. (In our case the answers were separate and we set up a separate and distinct right and defense.)

In the opinion it is further said that whatever rights were asserted or omission or acts done by one defendant had no dependence upon or relation to the acts of any other defendant. (And the same is true in these cases.) It is further said, if trespassers at all, the defendants were separate trespassers. (And the same is true in our cases. If wrongdoers at all, the defendants were separate wrongdoers.)

And with reference to some of the defaulting defendants it is further said:

> "Their rights, therefore, were entirely different from those of appellants; they were naked trespassers, and conceded by their default the rights of the United States and the Indians, and were in no position to resist the prayer of the bill. But the appellants justified by counter rights and submitted those rights for judgment. There is nothing, therefore, in common between appellants and the other defendants. The motion to dismiss is denied and we proceed to the merits."

In the case of Alsop v. Conway et al., 188 Fed. 568 (C. C. A. 6th), on page 572 of the opinion, it is said:

> "A preliminary question arises upon the motion of the appellee to dismiss the appeal on the ground that the parties interested in the appeal are not before the Court or their presence dispensed with through summons and severance. The rule invoked by appellees relates only to joint judgments (citing authorities). That portion of the decree from which the appeal is taken is clearly several as to the defendant Alsop. It is true that such provision has the effect to deny the right of recovery by the bank and its receiver in the state court proceeding; but that does not make the judgment joint."

In the case of Hightower et al. vs. American National Bank of Macon, 276 Fed. 371 (C. C. A. 5th), there was a suit by the American National Bank of Macon against the Commercial National Bank of Macon and its shareholders. The decree adjudged the plaintiff a creditor with the right of enforcing the shareholders' liability, and Hightower and others appealed. It is not clear as to who the others

were, but they must have been shareholders; and it is not clear who were the parties that did not appeal, but they must have been shareholders, and on page 374 of the opinion it is said:

> "Appellee moves to dismiss the appeal upon the ground that several defendants, as to whom a severance has not been had, have not joined in it. The liability is several and not joint, and may be appealed from by one or more defendants without joining others."

In the case of Adamson et al. v. Black Rock P. & I. Co., 12 Fed. (2nd) 437 (C. C. A. 9th), on page 439 of the opinion, it is said:

> "But it is equally well settled that, when the interest of a defendant is separate from that of other defendants, he may appeal without them."

In the case of Love v. Export Storage Co. et al., 143 Fed. 1 (C. C. A. 6th), on page 11 of the opinion, it is said:

> "The rule firmly established in the Appellate Courts of the United States requiring all parties against whom a judgment or decree is rendered, in the absence of severance, to join in suing out a writ of error or prosecuting an appeal therefrom, has application only to a joint judgment or decree against such parties. It has no application to separate judgments or decrees against such parties, though rendered at the same time and contained in the same entry."

Most of the cases cited by defendants in error in their motion merely support the general rule that one party to a joint judgment or decree cannot appeal or prosecute a writ of error alone. The only cases that, in our opinion,

bear any similarity to the cases at bar are the cases of Hardee v. Wilson, 146 U. S. 179, and Wilson v. Kiesel, 164 U. S. 248. But we do not think either of those cases is an authority against our position.

In the Hardee case there was but one piece of land involved, and Hardee asked this Court to determine the legal effect of a deed signed by Minor and wife, and to determine the amount of a debt owed by them. He did not make Minor and wife parties, and it would seem to be clear that they should be made parties.

The case of Wilson v. Kiesel, supra, bears more resemblance to the case at bar, but we think that it is clearly distinguishable. In that case Wilson first recovered a large judgment against the power company. He then filed a bill against the power company and Kiesel, Anderson, Carnahan and many others as stockholders of the power company. Kiesel, Anderson and Carnahan filed a cross-complaint, alleging that the judgment against the power company was fraudulent. About twenty-two other defendants filed their answers to the complaint. The case was first heard on appeal in the Supreme Court of the Territory of Utah, and that Court held that the judgment obtained by Wilson against the power company was not conclusive on the subscribers to its capital stock; that this judgment ought to have been reduced very much and would have to be reversed in order to afford the subscribers an opportunity to test the validity of Wilson's claim; that Wilson was not the real party in interest at the beginning of the action and could not maintain the action in his own name. That Court, so concluding, of course affirmed the judgment in favor of Kiesel, Carnahan and Anderson, reversed the judgment as to all other defendants, and directed the lower court to dismiss the bill. From this judgment Wilson appealed

to this court, making Kiesel, Carnahan and Anderson appellees. This Court said that the appeal must be dismissed for want of proper parties because of the cross complaint, and that all of the other defendants were directly and vitally interested in the disposition of the cross complaint. There was not only the cross complaint, but Wilson was the appellant in this court; he was the complainant in the trial court. He made all of the defendants parties to his suit in the trial court. When the case reached the Territorial Supreme Court it was disposed of, as this Court says, on a common ground. Not that Kiesel, Carnahan or Anderson had paid, but on the ground common to all that Wilson could not maintain the suit against any of the defendants. It seems to us that that having been the decision, Wilson clearly could not make three defendants a party to his appeal, nor four, nor five, nor any number less than all.

We submit that that case is clearly distinguishable from the case at bar, and that one of the important points of difference is that the appeal to this court was prosecuted by the complainant in the court below, and that the situation under that record is not the same as it would have been had the decision of the Territorial Supreme Court been adverse to the defendants, and Kiesel, Carnahan and Anderson had attempted to appeal.

It seems to us that the defendants in error in their motion, themselves, answer their own contention as to necessary parties as plaintiffs in error, when they say:

> "A reversal herein would add largely to the burden of the defendants not joined as plaintiffs in error, placing upon them the entire burden of the judgments and relieving the plaintiff in error therefrom."

If that contention be correct, then certainly neither Mr. Ferry, nor Mr. King nor Mr. Hadley, would join in our writ of error. Their interests would be that we fail to show that the judgment of the Supreme Court of Kansas as to us is erroneous; their interests would be to see that the judgment of the Supreme Court of Kansas, reversing the judgments in favor of this plaintiff in error, were sustained. And their interests being opposed to us, that they should have been made defendants in error to our writs, as was done.

We respectfully submit that in these cases there was drawn in question the validity of Sections 9-163 and 9-164 of the Statutes of the State of Kansas, on the ground that each section is repugant to the Constitution of the United States, and the decision of the highest court of that state was in favor of the validity of each of said statutes. That the serious illness of this plaintiff in error's decedent from August, 1922, to the time of his death in July, 1923, with the deposits being made and the closing of the bank having occurred in March, 1923, place this plaintiff in error in an especially favorable position to raise the question of the constitutionality of these statutes. That the question was raised at the first opportunity and kept in the cases throughout the litigation. That the mere fact that this plaintiff in error's decedent executed the oath as director and made a codicil to his will when he was seriously ill five hundred miles from the bank, does not show that he was able to examine the bank or that he kept in touch with its affairs. That under the authority of Briggs v. Spaulding, 141 U. S. 132, it was not shown that this plaintiff in error's decedent violated his duty. That section 9-164 is regugnant to the Fourteenth Amendment to the Constitution of the United States, be-

cause it made proof of the insolvency of the bank prima facie evidence of this plaintiff in error's decedent's assent to the reception of the deposits in question. That section 9-163 is repugnant to the Fourteenth Amendment to the Constitution of the United States because it made this plaintiff in error's decedent's failure to examine the bank, at a time when it was impossible for him to examine the bank, conclusive proof of his knowledge of the insolvent condition of the bank. That there is no lack of proper parties plaintiff in error in these cases, and that this motion should be overruled.

Respectfully submitted,

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Attorneys for C. L. Harris as Executor of the Last Will and Testament of T. A. Kramer, Deceased.

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In the

SUPREME COURT OF THE UNITED STATES.

October Term, 1927.

H. F. FERRY,
Plaintiff in Error,
vs.
ALICE M. RAMSEY et al.,
Defendants in Error.
No. 407.

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED,
Plaintiff in Error,
vs.
ALICE M. RAMSEY, C. L. KING, H. F. FERRY and L. D. HADLEY,
Defendants in Error.
No. 408.

H. F. FERRY,
Plaintiff in Error,
vs.
W. O. JAMES, C. L. KING and L. D. HADLEY,
Defendants in Error.
No. 409.

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED,
Plaintiff in Error,
vs.
W. O. JAMES, C. L. KING, H. F. FERRY and L. D. HADLEY,
Defendants in Error.
No. 410.

H. F. FERRY,
Plaintiff in Error,
vs.
RAMSEY PETROLEUM COMPANY, C. L. KING, L. D. HADLEY et al.,
Defendants in Error.
No. 411.

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED,
Plaintiff in Error,
vs.
RAMSEY PETROLEUM COMPANY, C. L. KING, H. F. FERRY and L. D. HADLEY,
Defendants in Error.
No. 412.

H. F. FERRY,
Plaintiff in Error,
vs.
G. L. RAMSEY, C. L. KING et al.,
Defendants in Error.
No. 413.

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED,
Plaintiff in Error,
vs.
G. L. RAMSEY, C. L. KING, H. F. FERRY and L. D. HADLEY,
Defendants in Error.
No. 414.

H. F. FERRY,
Plaintiff in Error,
vs.
M. R. CHASTAIN, C. L. KING, L. D. HADLEY et al.,
Defendants in Error.
No. 415.

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED,
Plaintiff in Error,
vs.
M. R. CHASTAIN, C. L. KING, H. F. FERRY and L. D. HADLEY,
Defendants in Error.
No. 416.

H. F. FERRY,
Plaintiff in Error,
vs.
A. E. LLOYD, C. L. KING and L. D. HADLEY,
Defendants in Error.
No. 417.

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED,
Plaintiff in Error,
vs.
A. E. LLOYD, C. L. KING, H. F. FERRY and L. D. HADLEY,
Defendants in Error.
No. 418.

In Error to the Supreme Court of the State of Kansas.

BRIEF OF C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR IN NOS. 407, 409, 411, 413, 415 AND 417.

The opinion of the Supreme Court of the State of Kansas in Cases Nos. 411, 412, 413 and 414 is reported in 122 Kansas, p. 675, and the opinion of the Supreme Court of the State of Kansas in Cases Nos. 407, 408, 409, 410, 415, 416, 417 and 418 is reported in 122 Kansas, p. 691.

STATEMENT ON CONSOLIDATION.

Each of the defendants in error, G. L. Ramsey, The Ramsey Petroleum Company, M. R. Chastain, A. E. Lloyd, Alice M. Ramsey and W. O. James, commenced an action in the District Court of Butler County, Kansas, to recover deposits alleged to have been made in The Butler County State Bank, the actions being brought under Sections 9-163 and 9-164, R. S. 1923, as is more fully set out under the next heading, "Statement on Jurisdiction." They were as follows:

G. L. Ramsey commenced an action against C. L. King, H. F. Ferry, L. D. Hadley, A. B. Ewing, G. W. Lyon, E. F. Adams and C. L. Harris as executor of the last will and testament of T. A. Kramer, deceased, to recover the sum of $22,726.16.

The Ramsey Petroleum Company brought the same kind of action against the same defendants to recover the sum of $27,211.96.

M. R. Chastain brought the same kind of action against the same defendants to recover the sum of $1,429.94.

A. E. Lloyd brought the same kind of action against the same defendants to recover the sum of $915.77.

Alice M. Ramsey brought the same kind of action against the same defendants to recover the sum of $7,063.67.

W. O. James brought the same kind of action against the same defendants to recover the sum of $7,819.72.

In all cases the pleadings of all parties were the same, except the names of the plaintiff and the amount claimed.

The case brought by G. L. Ramsey was tried before a jury and a separate verdict was returned as to each of the defendants except the defendants Lyon and Adams, in whose favor demurrers to the evidence were sustained (R. Nos. 407 and 408, pp. 330-331), and as to whom no formal verdicts were returned. A separate judgment was rendered in favor of the plaintiff and against each of the defendants C. L. King, H. F. Ferry, A. B. Ewing and L. D. Hadley on the verdicts returned against them. On the verdict returned in favor of this plaintiff in error a separate judgment was rendered in favor of him and against G. L. Ramsey in bar of the action (R. Nos. 407 and 408, pp. 335-337). G. L. Ramsey appealed to the Supreme Court of the State of Kansas from the judgment rendered against him in favor of this plaintiff in error, and from the judgment sustaining the demurrer to the evidence as to E. F. Adams. He made no one a party to this appeal except this plaintiff in error and E. F. Adams. This case was docketed separately in the Supreme Court of the State of Kansas. Afterwards C. L. King, H. F. Ferry and L. D. Hadley appealed from the judgments rendered against them in favor of G. L. Ramsey.

A transcript of the testimony in the G. L. Ramsey case was made, and each of the other cases mentioned above was tried before the Court without a jury under a stipulation that the transcript of the testimony in the G. L.

Ramsey case should be considered as the evidence in each of those cases with the additional evidence as to the amount of the deposit claimed by each plaintiff.

The case brought by The Ramsey Petroleum Company was the next case tried after the G. L. Ramsey case, and the Court found the facts against the defendants, King, Ferry, Ewing and Hadley, and found the facts in favor of this plaintiff in error. The Court made a separate finding as to this plaintiff in error (R. Nos. 407 and 408, p. 340). Separate judgments were rendered in favor of The Ramsey Petroleum Company against each of the defendants C. L. King, A. B. Ewing, H. F. Ferry and L. D. Hadley. A separate judgment was rendered in favor of this plaintiff in error against the said The Ramsey Petroleum Company (R. Nos. 407 and 408, p. 340). Demurrers to the evidence were again sustained in favor of Adams and Lyon.

The Ramsey Petroleum Company appealed from the judgments rendered against it in favor of E. F. Adams and this plaintiff in error. Such appeal was docketed separately in the Supreme Court of the State of Kansas as case No. 27,213. C. L. King and H. F. Ferry appealed from the separate judgments rendered against them and this case was docketed as case No. 27,217. L. D. Hadley appealed from the separate judgment rendered against him in favor of The Ramsey Petroleum Company, and this case was docketed separately as case No. 27,230. The Ramsey Petroleum Company in its appeals made no one parties except E. F. Adams and this plaintiff in error.

It having been called to the attention of the Supreme Court of the State of Kansas that these cases each presented the same question, they were ordered consolidated for hearing, and the appellants G. L. Ramsey and The Ramsey Petroleum Company were granted permission

to file one abstract which appears in this record as the abstract in case No. 27,109 in the Supreme Court of Kansas, and is found in R. Nos. 407 and 408, pp. 1 to 367, inclusive. The opinion of the Supreme Court of Kansas is found in 122 Kan. 675.

And that Court entered a judgment in each case affirming the judgments in favor of E. F. Adams and the respective judgments against C. L. King, H. F. Ferry and L. D. Hadley, reversing the judgment in favor of this plaintiff in error, and remanded the cases with instructions to render a judgment in favor of each plaintiff in the court below and against this plaintiff in error.

The cases brought by M. R. Chastain, A. E. Lloyd, Alice M. Ramsey and W. O. James were afterwards tried. The trial court in each of these cases found in favor of the plaintiffs and against the defendants King, Ferry, Hadley and Ewing, and sustained demurrers to the evidence as to E. F. Adams and Lyon, and in each case made a separate finding in favor of this plaintiff in error, the findings being identical with the findings made in the case of The Ramsey Petroleum Company, as set out in R. Nos. 407 and 408, p. 340. Separate judgments were rendered in each of these cases in favor of the plaintiff and against King, Ewing, Hadley and Ferry. The judgments were identical except as to amounts with the judgments rendered in the case of The Ramsey Petroleum Company (R. Nos. 407 and 408, pp. 340-341). Judgment was rendered in each of these cases in favor of this plaintiff in error and against the respective plaintiffs, which was in each case identical with the judgment rendered in the case of The Ramsey Petroleum Company (R. Nos. 407 and 408, p. 340).

W. O. James appealed to the Supreme Court of the State of Kansas from the judgment rendered against him in

favor of this plaintiff in error, and from the order sustaining the demurrer to the evidence as to E. F. Adams. No other persons were made parties to this appeal. C. L. King, H. F. Ferry and L. D. Hadley appealed from the judgments rendered against each of them and in favor of W. O. James. These cases were docketed in the Supreme Court as case No. 27,395.

A. E. Lloyd appealed from the judgment rendered against him in favor of this plaintiff in error and from the judgment sustaining the demurrer to the evidence as to E. F. Adams. No other persons were made parties to this appeal. C. L. King, H. F. Ferry and L. D. Hadley appealed to the Supreme Court of the State of Kansas from the judgments rendered against each of them and in favor of A. E. Lloyd.

Alice M. Ramsey appealed from the judgment rendered against her in favor of this plaintiff in error and from the judgment sustaining the demurrer to her evidence as to E. F. Adams. No other parties were made parties to this appeal. C. L. King, H. F. Ferry and L. D. Hadley appealed from the judgments rendered against each of them and in favor of Alice M. Ramsey.

M. R. Chastain appealed from the judgment rendered against her and in favor of this plaintiff in error and from the judgment sustaining the demurrer to her evidence as against E. F. Adams. C. L. King, H. F. Ferry and L. D. Hadley appealed from the judgments rendered against each of them and in favor of M. R. Chastain.

The appeals in the G. L. Ramsey case and The Ramsey Petroleum Company case came on for hearing in the Supreme Court of the State of Kansas, and the Court thereupon ordered the appeals in the James case, the Lloyd case, the Alice M. Ramsey case and the M. R. Chastain

case to be submitted on the same argument and briefs and upon the same abstract made and filed in the G. L. Ramsey case and The Ramsey Petroleum Company case. The Court rendered a memoranda decision in these last cases and entered a judgment in each affirming the judgments in favor of E. F. Adams and the respective judgments against C. L. King, H. F. Ferry and L. D. Hadley, and reversing the judgments in favor of this plaintiff in error, and remanded these cases with instructions to render a judgment in favor of each plaintiff in the court below against this plaintiff in error.

Thus it will be seen that the same question is involved in each of these cases. The pleadings of each of the parties to the suits and the evidence in each of the suits are the same, except as to the names of the different plaintiffs and the amount claimed. There is no difference in the verdicts, findings and judgments in the different cases in the trial court, except as to the names of the plaintiffs and the amounts. There is no difference in the appeals to the Supreme Court of Kansas, except as to the names of the appellants and the same judgment was rendered by the Supreme Court of Kansas in each of the cases.

From the judgment of the Supreme Court of the State of Kansas in the G. L. Ramsey case reversing the judgment of the court below in favor of this plaintiff in error, this plaintiff in error is prosecuting a writ of error to this Court. He is also prosecuting a like writ of error from the like judgments of the Supreme Court of Kansas rendered against him in each of the other cases, to wit, The Ramsey Petroleum Company case, the W. O. James case, the A. E. Lloyd case, the Alice M. Ramsey case and the M. R. Chastain case.

The record in the Supreme Court of the State of Kansas in these various cases, setting out the testimony and the opinions of the Supreme Court in all of the cases and the judgments rendered in the G. L. Ramsey case and The Ramsey Petroleum Company case, are all printed in R. Nos. 407 and 408, pp. 1 to 369, inclusive.

An order of consolidation and with reference to printing was made by the Supreme Court of the United States, consolidating cases 407 to 418, inclusive (R. Nos. 407 and 408, p. 396; R. Nos. 409 and 410, p. 26; R. Nos. 411 and 412, p. 26; R. Nos. 413 and 414, p. 26; R. Nos. 415 and 416, p. 25; R. Nos. 417 and 418, p. 25).

Under this order the cases were consolidated for hearing with directions to print the whole record in two of the cases and only so much of the record in the remaining cases as was necessary to show the difference between the cases, and a praecipe in accordance with this order was filed with the Clerk of the Supreme Court for the printing of the record (R. Nos. 407 and 408, p. 395).

The writs of error prosecuted by C. L. Harris, as executor, were docketed in this court and appear as cases numbered 408, 410, 412, 414, 416 and 418.

H. F. Ferry prosecuted separate writs of error from this court to the Supreme Court of the State of Kansas on the judgments rendered against him and these cases are docketed in this court as Nos. 407, 409, 411, 413, 415 and 417.

STATEMENT ON JURISDICTION.

The date of the judgment of the Supreme Court of Kansas in each of the cases is February 12, 1927 (R. in 407, 408, p. 347; R. in 409, 410, p. 1; R. in 411, 412, p. 2; R. in 413, 414, p. 2; R. in 415, 416, p. 1; R. in 417, 418, p. 1).

Petitions for rehearing were denied in each of the cases April 16, 1927 (R. in 407, 408, p. 369; R. in 409, 410, p. 1; R. in 411, 412, p. 2; R. in 413, 414, p. 2; R. in 415, 416, p. 1; R. in 417, 418, p. 1).

Each of the defendants in error, Alice M. Ramsey, W. O. James, the Ramsey Petroleum Company, G. L. Ramsey, M. R. Chastain and A. E. Lloyd, was a depositor in the Butler County State Bank, located at Eldorado, Kansas. C. L. King was president and a director of the bank; H. F. Ferry was cashier and a director; A. B. Ewing, L. D. Hadley and T. A. Kramer were directors of the bank. The State Bank Commissioner took charge of the bank March 30, 1923. Shortly thereafter each of the above-named defendants in error commenced a suit against the said officers and directors and also against E. F. Adams and G. W. Lyons to recover the balance to his credit in said bank. The petitions in each of the suits were exactly the same, except as to the name of the plaintiff and the amount claimed. Each suit was based on the following provisions of the Statutes of the State of Kansas:

> "9-163. Transactions During Insolvency.—It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution, to assent to the reception of deposits or the creation of debts by such banking institution after he shall have

had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same and, if possible, know its condition. And upon failure of any such person to discharge such duty he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received and all such debts so contracted: Provided, any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities."

"9-164. Proceedings Under Foregoing Section.—In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents or managers of any such banking institutions, charged with having so assented to the reception of such deposit or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith."

Each defendant in each suit filed a separate answer. In each answer of this plaintiff in error he alleged that the above-mentioned sections of the Revised Statutes of Kansas for 1923 were unconstitutional and in violation of the

Fourteenth Amendment to the Constitution of the United States (R. in 407, 408, p. 31).

In each answer this plaintiff in error set forth the physical and mental incapacity of T. A. Kramer, his decedent, during all of the time in question in the suits (R. 407 and 408, pp. 26 to 29).

Demurrers were sustained to the allegations of the answers alleging the unconstitutionality of these statutes (R. in 407, 408, p. 456).

An appeal was taken to the Supreme Court of the State of Kansas from the ruling of the Court sustaining these demurrers, and the action of the lower court was sustained (Ramsey Petroleum Company v. E. F. Adams et al., 119 Kans. 844, 241 Pac. 433).

Upon the trial this plaintiff in error objected to the introduction of any evidence because of the unconstitutionality of said statutes (R. in 407 and 408, pp. 89, 90).

Upon the trial the evidence showed that T. A. Kramer during all of the time in question was physically and mentally incapacitated to transact any business; that he became seriously ill in Boston in August, 1922; that after remaining there for some time in a hospital he was taken to East St. Louis, Illinois; that he was unable to leave East St. Louis, but remained there until he died, in July, 1923, and, of course, during said time did not examine into the affairs of the bank (R. in 407, 408, pp. 221, 234-242).

The evidence also showed that E. F. Adams and G. W. Lyons were not directors of the bank at any of the times in question, and the Court sustained a demurrer to the evidence as to them in each of the cases on this ground.

A separate verdict was returned by the jury as to each defendant in the case tried to the jury (R. in 407, 408, p.

330), and a separate finding was made by the Court as to each defendant in the cases tried by the Court (R. in 407, 408, pp. 339 and 340).

A separate judgment was rendered in each case as to each defendant. A judgment was rendered against C. L. King for the full amount claimed in each case and a like judgment against H. F. Ferry, L. D. Hadley and A. B. Ewing, and a judgment was rendered in each case in favor of this plaintiff in error and against the plaintiff in each case (R. Nos. 407, 408, pp. 335, 336, 337, 340 and 341).

From each judgment in favor of this plaintiff in error each respective plaintiff in the court below prosecuted an appeal to the Supreme Court of the State of Kansas, and from each judgment in favor of the plaintiff and against C. L. King, H. F. Ferry and L. D. Hadley they each appealed to the Supreme Court of the State of Kansas.

In each of the appeals of the said plaintiffs against this plaintiff in error, this plaintiff in error again contended that each of the statutes above mentioned was unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States. This contention was taken up, discussed and decided by the Supreme Court of the State of Kansas, and each of said statutes was held to be valid and not in violation of the Fourteenth Amendment to the Constitution of the United States, and it was further held that under the provisions of said section 9-163, T. A. Kramer's representative was prohibited from showing any reason or excuse why said T. A. Kramer had not made an examination of the bank, and the Court held that T. A. Kramer was conclusively held to have had knowledge of the insolvent condition of the bank, because of his failure to examine (R. in 407, 408, p. 348).

The Supreme Court affirmed the judgment in favor of E. F. Adams in each case and affirmed each of the judg-

ments against C. L. King, H. F. Ferry and L. D. Hadley and reversed the judgments in favor of this plaintiff in error with directions to the lower court to enter judgment in each case against this plaintiff in error for the amounts claimed to be due by the plaintiffs below.

Jurisdiction of this Court is invoked under the provisions of paragraph (a) of Section 237 of the Judicial Code, United States Code, Title 28, Sec. 344.

The following decisions sustain the jurisdiction of this Court to review the judgment below:

Commonwealth Bank of Ky. v. Griffith, 14 Pet. 56, 39 U. S. 55;
Merchants Natl. Bank v. City of Richmond, 256 U. S. 635, 65 L. Ed. 1135.

STATEMENT.

All of the above actions were brought in the District Court of Butler County, Kansas, to recover of the officers and directors of the Butler County State Bank on account of deposits made by the different plaintiffs in the month of March, 1923, a time when it was claimed the bank was in an insolvent condition and so known to be to such officers and directors.

The parties sued in each case were C. L. King, H. F. Ferry, L. D. Hadley, A. B. Ewing, E. F. Adams, G. W. Lyon and this plaintiff in error. In each of the cases the Court, at the close of the plaintiff's testimony, sustained demurrers as to Lyon and Adams on the ground that the evidence showed they were not officers or directors of the bank at the time of the reception of the deposits in question.

The case brought by G. L. Ramsey was tried to a jury and the Court submitted separate verdicts, one for each

defendant, which appear on page 330 R. in Nos. 407-408. The jury returned separate verdicts as to each of the defendants. As to this plaintiff in error the jury returned a verdict in his favor and against the plaintiffs. In the cases tried before the Court separate findings were made and separate judgments rendered as to each of the defendants, and in each of the cases the Court found in favor of this plaintiff in error and against the various plaintiffs.

In each of the cases tried in the District Court the various plaintiffs appealed from the various judgments rendered in favor of E. F. Adams, sustaining her demurrer to the evidence and to the various judgments rendered in favor of this plaintiff in error and against the various plaintiffs. In each of these appeals the plaintiff below made none of the parties in the lower court parties to the appeals except this plaintiff in error and E. F. Adams. C. L. King, H. F. Ferry and L. D. Hadley prosecuted separate appeals from the judgment rendered against them and in favor of the plaintiffs. The appeals were docketed as separate causes, but were argued and submitted on the briefs and abstract filed in the G. L. Ramsey case and in the Ramsey Petroleum Company case, so that the appeals of the Supreme Court stood as follows:

G. L. Ramsey appealed from the judgment rendered against him in favor of this plaintiff in error and Adams; so did the Ramsey Petroleum Company and each of the other plaintiffs below in each of the other cases in the District Court of Butler County. In each of these appeals the Court affirmed the judgment as to Mrs. Adams, so that she is no longer interested in any way in these cases and has no judgment against her, and she went out of the cases on the sole proposition that she was neither an officer nor director of the bank at any of the times involved in any of these cases. The Supreme Court of Kansas re-

versed the various judgments in favor of this plaintiff in error, with instructions to enter in each of the cases a judgment in favor of the respective plaintiffs and against this plaintiff in error. No one was a party in the Supreme Court of Kansas in any of these appeals from the judgments of the lower court in favor of E. F. Adams and this plaintiff in error except the plaintiffs in the various cases and this plaintiff in error and E. F. Adams. E. F. Adams, upon a decision of the Supreme Court of the State of Kansas affirming the judgments of the lower court in her favor, had no further interest of any kind in the litigation. From the judgments of the Supreme Court in each of these various cases reversing the judgment of the lower court in his favor and ordering a judgment against him, this plaintiff in error has prosecuted a writ of error.

In the District Court separate answers were filed by each of the defendants in such actions.

This plaintiff in error filed an answer in each suit in which he denied all the allegations of the petition and, in addition, alleged that Section 9-163 of the Revised Statutes of 1923, under which the action was brought, was in violation of the Fourteenth Amendment to the Constitution of the United States, in that it sought to deprive him of property without due process of law, and in that it denied to him, in the jurisdiction of the State of Kansas, equal protection of the law. And also alleged that Section 9-164, Revised Statutes of 1923, was in violation of the Fourteenth Amendment to the Constitution of the United States, in that it denied to him equal protection of the law, and in that it deprived him of property without due process of law (R. Nos. 407-408, p. 31). He also denied that the bank was insolvent or in failing circumstances at the time of the reception of the deposits, and denied that his decedent, T. A. Kramer, knew that said

bank was in a failing condition, or insolvent, and denied that the said T. A. Kramer, by an examination into the affairs of the bank, could have ascertained that the bank was insolvent or in failing circumstances; denied that T. A. Kramer assented to any reception of such deposit, and also denied that T. A. Kramer at any time participated in the active conduct and management of the affairs of said bank, except in connection with such duties as he may have performed from time to time as a director of said bank.

He also made the following allegations:

"And further answering, this defendant alleges that T. A. Kramer, prior to the 10th day of July, 1922, and about the .... day of August, 1918, lived in the State of California, and on said last-mentioned date and while still in California was taken sick with obstruction of the bowels and was compelled to and did undergo a severe surgical abdominal operation, from the result of which he never fully recovered, and on or about the .... day of May, 1920, he returned to Eldorado, Kansas, where he was again compelled, by an aggravated recurrence of said trouble, to undergo another serious abdominal operation, and was, by reason thereof, unable to attend to any business, and was confined to the hospital where the operation was performed for a period of about three weeks, and after his discharge from the hospital was sick and enfeebled by reason of such condition, and never fully recovered therefrom. That on or about the 10th day of July, 1922, being still enfeebled and in poor health, he left Eldorado on a trip for the purpose of rest and recuperation, and went to East St. Louis, Illinois, where he remained with his brother, R. J. Kramer, until July 23, 1922, when still seeking rest and recuperation, he left with his brother, J. H. Kramer,

for an Eastern trip, and on August 15, 1922, when near the City of Boston, Massachusetts, he had an attack of complete bowel obstruction which entirely prevented the passage of fecal matter throught the bowels, and was immediately taken to the Commonwealth Avenue Hospital and placed in charge of competent surgeons, and on August 16, 1922, he underwent a surgical operation for this trouble, which was performed by Dr. Henry M. Chase of Boston. His abdomen was opened and it was found that the small intestines were completely obstructed by a large number of adhesions, and that the small intestines were ruptured and it was found impossible to release all the adhesions. That the rupture of the small intestines never healed but remained open during the remainder of his life, and the incision in his abdomen made in such operation remained open during the rest of his life. That for a time after said operation it was impossible for him to take nourishment in the usual way, and it became necessary to give him nourishment through the opening in the bowels.

"That from the 16th day of August, 1922, until the time of his death, which occurred July, 1923, he had what is known as a fecal fistula at the place where the incision was made for the operation, and during all the remainder of his life fecal matter from the small intestines constantly passed from the opening and inflamed the wound and flesh about the wound, and caused him great and constant pain and suffering. For some time after said operation he was sick and hovered between life and death with little hope of recovery, and afterwards and on September 4, 1922, his condition became so serious that it became necessary to perform another abdominal operation, and such operation was performed and restrictions of the bowels at different places were removed so far as it was possible to remove the same, but it was impossible to remove all of such restrictions. In this opera-

tion another opening was made through the abdominal walls over the cecem in the illic cecal region. That on account of his weakened physical condition it was impossible at this operation to give him an anesthetic, and in the performance of this operation a local anesthetic, called novocain, was used. After this operation he remained very sick and weak for more than a month, but finally gained sufficient strength so that by the middle of October, 1922, he was able to sit in a chair and move about the room without assistance.

"That on or about the 1st day of November, 1922, while he was still suffering greatly, it was determined best to remove him from said hospital and take him to East St. Louis, Illinois, to the home of his brother, R. J. Kramer, where he might be among his relatives and where he might receive and could receive and would receive the personal care and attention which he required.

"That during his trip from Boston to East St. Louis, he had to remain in his berth in the drawing room under the constant care of his nurse. That after he arrived at East St. Louis, he regained sufficient strength to enable him to walk about a little in the room, but this lasted for only two or three days. That he remained in East St. Louis until he died there, on the 23rd day of July, 1923. That during all the time he was in East St. Louis, except the period of two or three days above mentioned, he was confined to his bed, except for short periods, during which he was able to sit up in his chair when placed therein by his attendant.

"That during all the time from the first operation until the time of his death he was under the care of surgeons and physicians and two nurses.

"That about the middle of December, 1922, it became apparent to his physicians that another operation was necessary, and he was thereupon removed to

the Deaconess Hospital in East St. Louis, and on December 20, 1922, another abdominal operation was performed, to wit: The abdomen was opened at the outer border of the left rectus muscle, and the small intestine was anastomosed with the large intestines, and it was then discovered that it was impossible to release or remove all the adhesions binding the small intestines. That after this operation his condition did not improve, and the fistula before mentioned did not heal. That he remained at said hospital about a month, when he was again taken back to the home of his brother in East St. Louis, where his condition gradually grew worse until the date of his death.

"That from the time of his first operation until the time of his death, by reason of his sickness, suffering and physical conditions he was unable to attend to any business of importance. That he suffered all the time intense and severe pain; that by reason of his condition he was unable to return to Eldorado at any time from the date of his first operation, on August 16, 1922; that his suffering was so intense, his physical condition of such a character and nature and so affected him that it was impossible for him to direct his mind for any length of time to any business matter, or to give any attention to any business affairs at any time, and he was unable to concentrate his mind for any length of time on any of his affairs.

"That by reason of the facts and circumstances above set forth, it was impossible for him to give any attention to the affairs of said Butler County State Bank, and during all of said period he had no access to the books and records of said bank and was in no condition physically or mentally to make any examination of the business or the condition of said bank, and it was impossible for him to assent to the acceptance of any deposits in said bank. That during all the period of his illness as above described he was constantly attended by his brothers and their families,

and, acting under the advice of his physicians, all matters of business were kept from him so far as possible as to prevent him from worrying over the same and injuring his health thereby. That it would have been impossible for him to give any serious attention or consideration to business matters without seriously injuring his health and shortening his life."

Evidence was offered in support of the above allegations and the physical and mental condition of Mr. J. A. Kramer, from the time he was taken sick in Boston, July, 1922, until the date of his death, was shown to be substantially as set out in the answers (R. Nos. 407, 408, pp. 221, 234 to 242).

At the close of the testimony in relation to the physical and mental condition of T. A. Kramer the plaintiff in the lower court interposed an objection which was overruled. The objection is found on page 242 of the transcript of the record in cases Nos. 407 and 408.

The Court instructed the jury, in the jury case, that if it found from the evidence that Kramer was in the condition described and by reason thereof unable to examine into the condition of the bank, it should not take into consideration such failure in determining the question of whether he did or did not have knowledge of the insolvent condition of the bank, and instructed it that if he was in the condition described, and by reason thereof physically or mentally unable to make any examination he would not be required to make an examination and he would not be chargeable with failure so to do (pp. 324, 325 R. in 407 and 408).

Separate verdicts were submitted as to each of the defendants. Five verdicts were returned into court. One of them finding against C. L. King in the sum of $19,379.34, and similar verdicts as to the other defendants

except this plaintiff in error. They returned the following verdict as to him:

> "We, the jury, impaneled and sworn in the above-entitled cause, do upon our oath find for the defendant C. L. Harris, executor of the estate of T. A. Kramer, deceased, not liable on account of said T. A. Kramer being physically unfit to know the condition of the Butler County State Bank at the time the deposits were made by the plaintiff that are now in controversy" (R. Nos. 407, 408, p. 330).

The plaintiff filed a motion for a new trial which was overruled. Separate judgments were entered on the verdicts. The judgment as to King, Ferry and Ewing is found on pages 335 and 336 of the transcript of the record in Nos. 407, 408. The judgment as to this plaintiff in error is found on pages 336 and 337. The judgment as to this plaintiff in error was that the plaintiff take nothing by reason of his cause of action and that the judgment be rendered in favor of C. L. Harris, as executor of the last will and testament of T. A. Kramer, that he go hence without day and that he recover his costs from the plaintiff. All of the other cases here on writs of error were tried before the Court without a jury and submitted on the evidence introduced in the G. L. Ramsey case, as found in the transcript of the record of Nos. 407, 408, pages 1 to 290, inclusive, and the additional evidence as to the amounts of the various deposits. In each of the cases tried before the Court the Court made separate findings against the separate defendants and rendered a separate judgment against the defendant other than this plaintiff in error.

In the case of the Ramsey Petroleum Company, a separte judgment was rendered against C. L. King for the

sum of $27,211.96, with interest, and a similar judgment rendered against H. F. Ferry; also one against A. B. Ewing and one against L. D. Hadley for a like amount.

The Court made a special finding as to T. A. Kramer as follows:

> "The Court further finds that at the time of the making of the deposits set out in the plaintiff's amended petition, that by reason of the physical and mental incapacity of T. A. Kramer, that said T. A. Kramer was unable to make any examination of the books and records of the Butler County State Bank of Eldorado, Kansas, and had no personal knowledge of the making of such deposits, and that by reason of such physical and mental incapacity did not assent to the reception of such deposits by said bank and that against the defendant C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, that plaintiff is not entitled to recover in this action and that such defendant should recover judgment against the plaintiff for costs herein expended."

In each of the other cases the trial court made similar findings and rendered similar judgments in favor of this plaintiff in error. From the various judgments rendered in favor of this plaintiff in error the various plaintiffs appealed to the Supreme Court of the State of Kansas, where it was contended by them that the incapacity of Kramer constituted no defense and that under the provisions of Section 9-163, Revised Statutes of 1923, if he did not examine he was conclusively held to have knowledge of the condition of the bank and could not be heard to have any excuse or reason for such failure to examine, while this plaintiff in error contended that Section 9-163 of the Revised Statutes, if so construed, was in violation of the Fourteenth Amendment to the Constitution

of the United States, in that, so construed, it deprived him of property without due process of law and denied to him the equal protection of the law. He also contended that section 9-164 was in violation of the Fourteenth Amendment to the Constitution of the United States for the same reason.

The Supreme Court of the State of Kansas held with the appellants in each of the cases, holding that the special defense of incapacity was unavailing, held that the instructions of the Court Nos. 22, 23, 24 and 25 were each erroneous and held, as stated in the motion of the defendants in error to dismiss these writs of error, that the fact that the statutes hold the director to possess knowledge of the insolvency or the failing circumstances of the bank and does not permit him to show any excuse for failure to examine, does not deprive him of property without due process of law and does not deny him the equal protection of the law, and held that when insolvency or failing circumstances of a bank is established as a fact then knowledge of that fact is held to the director if he failed to discharge the duty imposed by the statute; that when T. A. Kramer accepted the office as director of the Butler County Bank he accepted it subject to all the requirements, obligations and liabilities imposed by the statute. That the prohibition and requirements of the statutes are positively mandatory; that failure to conform to the rule of conduct laid down in the statute imposed the liability thereby created and from which there is no escape. This is clearly set out in the argument of the defendants in error on their motion to dismiss.

The Supreme Court of the State of Kansas also held, as stated on page 12 of such argument, that an officer or director charged with a violation of the statute has the

right to defense on the issue of insolvency or failing circumstances, but he does not have the right to set up his ignorance occasioned by failure to discharge the duty imposed by statute as a defense against the liability thereof, and held, as stated on page 13 of said brief, that when the State of Kansas enacted the provisions of the statute hereinbefore set out, it laid down the yardstick by which the liability of a director or officer of a bank was to be measured, and that such statute contained the rule by which to measure the right to recover from directors for loss occasioned from violation of the duty imposed by statute. That it mattered not from what circumstances such violation arose.

It was contended by this plaintiff in error that such construction of the statute deprived his decedent's estate of property without due process of law and denied to him the equal protection of the law.

The Supreme Court of the State of Kansas, holding in substance as above set out, reversed the judgment of the District Court of Butler County, Kansas, in each of the cases in favor of this plaintiff in error, with instructions to the lower court to set aside such judgments and render a judgment in favor of each of the plaintiffs in the trial court, and it is from such judgments that these writs of error are prosecuted.

SPECIFICATIONS OF ERROR RELIED UPON.

First. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163, Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Second. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-164, Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Third. The Supreme Court of the State of Kansas erred in holding and deciding that by the provisions of Section 9-163, Revised Statutes of the State of Kansas, this plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth. The Supreme Court of the State of Kansas erred in holding and deciding that by the provisions of Section 9-164, Revised Statutes of the State of Kansas, this plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth. The Supreme Court of the State of Kansas erred in holding and deciding that by the provisions of Section 9-163, Revised Statutes of the State of Kansas, this plaintiff in error was not deprived of property without due process of law.

Sixth. The Supreme Court of the State of Kansas erred in holding and deciding that by the provisions of Section

9-164, Revised Statutes of the State of Kansas, this plaintiff in error was not deprived of property without due process of law.

Seventh. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163, Revised Statutes of the State of Kansas, did not deny to this plaintiff in error equal protection of the law.

Eighth. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-164, Revised Statutes of the State of Kansas, did not deny to this plaintiff in error equal protection of the law.

Ninth. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163, Revised Statutes of the State of Kansas, as interpreted by the Supreme Court of the State of Kansas, did not deny to this plaintiff in error equal protection of the law in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make examination into the affairs of the said Butler County State Bank during the time in question in said causes.

Tenth. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163, Revised Statutes of the State of Kansas, which provide that if an officer or director of a bank does not examine into the affairs of the bank he shall be held to have had knowledge of the condition of the bank were not in violation of the Fourteenth Amendment to the Constitution of the United States, and did not, as interpreted by said Court, deprive this plaintiff in error of property without due process of law, when the circumstances were that

during the time in question it was impossible for this plaintiff in error's decedent, T. A. Kramer, a director of said bank, to make an examination of said bank.

Eleventh. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163, Revised Statutes of the State of Kansas, which by its terms created a conclusive presumption of knowledge against the decedent of this plaintiff in error, T. A. Kramer, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

Twelfth. The Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-164, Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent or in failing circumstances at the time of the reception of the deposits charged to have been received, prima facie evidence of the assent of the decedent of this plaintiff in error to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

Thirteenth. The Supreme Court of the State of Kansas has held and decided herein that the provisions of Section 9-163, Revised Statutes of the State of Kansas, created a conclusive presumption of knowledge and has held and decided herein that under said provisions this plaintiff in error would not be permitted to show any reason or excuse whatsoever why his decedent, T. A. Kramer, had not made an examination into the affairs of the said Butler County State Bank, and in so holding and deciding erred in holding and deciding that said statute, as so interpreted, was not in violation of the Foutreenth Amendment to the Constitution of the United States.

SUMMARY.

Section 9-164 of the Revised Statutes of Kansas for 1923 is unconstitutional as in violation of the Fourteenth Amendment to the Constitution of the United States, because it deprives persons, and particularly this plaintiff in error and his decedent's estate, of property without due process of law, and denies equal protection of law by seeking to create a prima facie resumption of assent by proof of a fact entirely unrelated to the main fact sought to be established.

Railway Company v. Turnipseed, 219 U. S. 35;
Hawes v. Georgia, 258 U. S. 1;
Manning v. John Hancock Mut. L. Ins. Co., 100 U. S. 693;
Luria v. United States, 231 U. S. 9-25;
McFarland v. American Sugar Co., 241 U. S. 79;
Bailey v. Alabama, 219 U. S. 219.

Section 9-164 of the Revised Statutes of Kansas for 1923 is unconstitutional and violative of the Fourteenth Amendment in that it deprives persons, and particularly this plaintiff in error and his decedent's estate, of property without due process of law by creating a presumption which is based upon a presumption.

5 C. J. 811;
Welch v. Sackett, 12 Wis. 243-257;
Jewell v. Jewell, 84 Me. 304-307, 24 Atl. 858;
Hanscom v. Home Ins. Co., 92 Me. 333, 339, 38 Atl. 324;
Patterson v. Stewart, 41 Minn. 84, 94, 42 N. W. 926;
22 C. J. 84;
Railroad Co. v. Baumgartner, 74 Kans. 148;
United States v. Ross, 92 U. S. 281;

Manning v. John Hancock Mut. L. Ins. Co., 100 U. S. 693, 10 Ann. Cases 1097;
Cunard Steamship Co. v. Kelley, 126 Fed. 610, 66 C. C. A. 533;
10 R. C. L. 870;
Duncan v. Railroad Co., 82 Kans. 230.

Section 9-163 of the Revised Statutes of Kansas for 1923, as construed by the Supreme Court of the State of Kansas in these cases, violated the provisions of the Fourteenth Amendment to the Constitution of the United States as to this plaintiff in error in that it required the decedent of this plaintiff in error to do the impossible.

"Impossobilium Nulla Obligatio Est," Wharton Legal Lexicon;
31 C. J. 258;
First Nat. Bank of Belle Plaine v. McConnell, 14 L. R. A. (n. s.) 616-618, 114 N. W. 1128;
"Impotentia Excusat Legem," Bouvier Law Dictionary;
Bayer v. Hoboken, 40 N. J. L. 152, 155;
Parker's Estate, 19 Pa. Co. 606-608;
"Lex Non Cogit Ad Impossibilia," Broom's Legal Maxims, *238;
"Lex Non Intendit Alliquid Impossibile," Black's Law Dictionary;
36 C. J. 1048;
Williams v. Hays, 157 N. Y. 541, 43 L. R. A. 253, 255;
United States v. Kirby, 7 Wall. 482;
People v. McRoberts, 62 Ill. 38;
Fusz v. Spaunhorst, 67 Mo. 256;
St. Louis and S. F. Ry. Co. v. Evans and Howard Brick Co., 85 Mo. 307-329;
Doaldson v. Wood, 26 Wend. 399;

Henderson v. Mayor of New York, 92 U. S. 268;
In re Leong Yick Dew, 19 Fed. 490, 495;
Runyan et al. v. Culver, L. R. A. (1916 F.) 3;
Wheeler v. Conn. Mut. Life Ins. Co., 82 N. Y. 543;
Berg v. Erickson, 234 Fed. 817, L. R. A. (1917 A) 648-651;
Usher v. Hiatt, 18 Kans. 195;
Briggs v. Spaulding, 141 U. S. 132.

Section 9-163 of the Revised Statutes of Kansas for 1923 violates the Fourteenth Amendment to the Constitution of the United States because it creates a conclusive presumption of knowledge on account of failure to examine the bank. This was not within the power of the Kansas Legislature.

Bailey v. State of Alabama, 219 U. S. 219;
Cooley on Constitutional Limitations (5th Ed.), 453;
Choctaw O. & G. R. Co. v. Harrison, 235 U. S. 292, 59 L. Ed. 234;
Galveston H. & S. A. R. Co. v. Texas, 210 U. S. 217;
Louisville & Nashville Ry. Co. v. Melton, 218 U. S. 36;
Luria v. United States, 231 U. S. 9, 58 L. Ed. 101;
Larson v. Dickey, 42 Am. Rep. 595;
Milheim et al. v. Moffatt Tunnel Imp. Dist. et al., 262 U. S. 710, 67 L. Ed. 1194;
Meyer v. Berland, 39 Minn. 438, 12 Am. St. Rep. 663, 40 N. W. 513;
McFarland v. American Sugar & Refining Co., 241 U. S. 79, 36 Sup. Ct. Rep. 498;
Orient Ins. Co. v. Daggs, 172 U. S. 557, 43 L. Ed. 552;
Railroad Co. v. Simonson, 64 Kans. 802;
Railway Co. v. Payne, 83 Ark. 816, 34 Am. Rep. 55;
Railway Co. v. Parks, 32 Ark. 131;
Railway Co. v. Turnipseed, 219 U. S. 35;

Schlesinger v. Wisconsin, 270 U. S. 230, 70 L. Ed. 557;
Vega S. S. Co. v. Elevator Co., 74 Am. St. Rep. 484;
Yee Hem v. U. S., 260 U. S. 178, 69 L. Ed. 904;
Ziegler v. Railroad Co., 58 Ala. 599, 6 R. C. L. 453, 462.

Questions of fact are not open in the Supreme Court of Kansas on appeal.

Bayer v. Cockerill, 3 Kans. 282;
Mueller v. Campbell, 95 Kans. 420;
Bartells v. School District, 89 Kans. 233;
Bateman et al. v. Preisser et al., 123 Kans. 217;
Reeves v. Sroade, 124 Kans. 423.

A writ of error to this Court would not lie from the decision of the Supreme Court of Kansas in the case of Ramsey Petroleum Company v. Adams, 119 Kans. 844, because that was not a final decision.

Georgia Ry. & Power Co. et al. v. Town of Decatur, 262 U. S. 432.

ARGUMENT.

Section 9-164 of the Revised Statutes of Kansas for 1923 is unconstitutional and is in violation of the Fourteenth Amendment to the Constitution of the United States because it deprives persons and particularly this plaintiff in error and his decedent's estate of property without due process of law and denies equal protection of law by seeking to create a prima facie presumption of assent by proof of a fact entirely unrelated to the main fact sought to be established.

Section 9-164, Revised Statutes of Kansas for 1923, provides that proof of insolvency shall be prima facie evidence both of knowledge of the insolvency of the bank and of assent to the reception of deposits.

Every man is presumed to do his duty. The law does not presume that any one charged with an obligation violates the obligation. The law forbids the reception of deposits when it is known that the bank is insolvent and makes every officer assenting to the reception of deposits when he knows the bank insolvent individually liable for such deposits so received.

It is, therefore, to be presumed that an officer and director of a bank will not violate this provision of this statute. When proof is introduced tending to show that the bank was insolvent at the time of the reception of the deposit in question, such proved fact may tend to prove that the officer or director of the bank had knowledge of its condition, but it has no tendency to prove that he assented to the reception of deposits. The natural presumption would be that an officer, who is presumed to do his duty, would not assent to the reception of deposits when he knew that the bank was insolvent.

Certain facts may tend to prove certain other facts, but it is essential that such fact shall have a rational connec-

tion with the fact to be proved; that is, there must be a rational connection between the fact proved and the ultimate fact presumed. The inference that one fact may prove another shall not be so unreasonable as to be arbitrary. In what way does the mere fact that a bank was insolvent at a certain time tend to prove that the officer or director of the bank violated his oath of office and assented to the unlawful reception of deposits? Applied to the cases before this Court, what tendency does the mere fact that in the month of March, 1923, when certain deposits were received in the Butler County State Bank, the bank was insolvent have to prove that T. A. Kramer, who was five hundred miles away confined to his bed under the influence of opiates, mentally and physically incapacitated from transacting any business of any kind, then assented to the reception of such deposits?

In the case of Railway Company v. Turnipseed, 219 U. S. 35, at page 43 of the opinion, it is said:

> "That the legislative presumption of one fact from evidence of another may not constitute a denial of due process of law, or a denial of the equal protection of the law. It is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of evidence operate to preclude the party from the right to present his defense to the main fact thus presumed."

To the same effect is the holding in Luria v. United States, 231 U. S. 9-25.

In the case of McFarland v. American Sugar Company, 241 U. S. 79, it was held that a Louisiana statute, creating

the rebuttable presumption that any person systematically paying in that state a less price for sugar than he paid in another state, was a party to a monopoly or conspiracy in restraint of trade, was unconstitutional under the Fourteenth Amendment as being so arbitrary as to be beyond possible justice, the presumption created having no foundation except an intent to destroy, and there is no rational connection between the fact proved and the ultimate fact presumed.

In the case of Hawes v. Georgia, 258 U. S. 1, on page 4 of the opinion, it is said:

> "In Hawkins v. Bleakly, 243 U. S. 210-214, it is said: 'The establishment of presumptions and all rules respecting the burden of proof is clearly within the domain of the state governments, and that a provision of this character not unreasonable in itself and not conclusive of the rights of the party, does not constitute a violation of due process of law (Mobile, Jackson & Kansas City R. R. Co. v. Turnipseed, 219 U. S. 35-42).' Undoubtedly there must be a relation between the two facts (Bailey v. Alabama, 219 U. S. 219; McFarland v. American Sugar Refining Co., 241 U. S. 79); that is, if one may be evidence of the other, there must be connection between them—a requirement that reasoning insists on and necessarily the law."

Section 9-163 of the Revised Statutes of Kansas for 1923, as construed by the Supreme Court of the State of Kansas in these cases violates the provisions of the Fourteenth Amendment to the Constitution of the United States as to this plaintiff in error in that it required the decedent of this plaintiff in error to do the impossible.

The Supreme Court of the State of Kansas held that the provisions of section 9-163, which provide that it shall be

the "duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and if possible know its condition, and upon failure of any such person to discharge such duty he shall for the purpose of this act be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances," was mandatory and compulsory; that no excuse for failure to examine would avail an officer or director, and that the fact that the decedent of this plaintiff in error was sick and unable, mentally and physically, to make any examination of the bank or to attend to any business matter in connection with the bank or to come to El Dorado, where the bank was located, for the purpose of making an examination, furnished no excuse whatever for his failure to examine; that his failure under such conditions charged him with knowledge of the insolvent condition of the bank, or that it was in failing circumstances at the time each deposit was made, and that he would not be permitted to offer any evidence showing his condition or any excuse whatsoever for his failure to examine.

This holding of the Supreme Court required the decedent of this plaintiff in error to do the impossible. It interpreted the statute so that the Legislature by this provision of the act was held to have required the impossible. This neither the Court nor the Legislature can require. Such holding violates the provisions of the Fourteenth Amendment to the Constitution of the United States and it violates the fundamental principles of the common law and every principle of justice.

The universal rule is, or was, until the Supreme Court of Kansas spoke, that where an obligation or duty is imposed upon a person by law, he will be absolved from

liability for nonperformance if such nonperformance was caused by an act of God or because of impossibility.

The legal maxims "Impossibilium nulla obligatio est," "Impotentia excusat legem," "Lex non cogit ad impossibilia" and "Lex non intendit alliquid impossibile" are universally recognized.

In Broom's Legal Maxims it is said:

> "The law in its most positive and peremptory injunctions is understood to disclaim, as it does in its general aphorisms, all intention of compelling to impossibilities and the administration of laws must adopt that general exception in the consideration of all particular cases."
>
> "The law intends what is agreeable to reason; it does not suffer an absurdity. Impossibility is an excuse in law and there is no obligation to perform impossible things."
>
> Williams v. Hays, 157 N. Y. 541, 43 L. R. A. 253-255.

"Impossibilium nulla obligatio est. The law never requires the doing of an impossible thing (Dow v. State Bank, 88 Minn. 355, 93 N. W. 121), though it often awards damages for a failure to perform express contract stipulations, where performance was rendered impossible by reason of intervening overpowering causes other than an act of God (9 Cyc Law and Proc. 627), but the principle involved in cases of that kind does not apply to the duties or obligations arising by implication of law (Paradine v. Jane, Aleyn, 26; School District No. 1 v. Dauchy, 25 Conn. 530, 68 Am. Dec. 371). In other words, a person will be relieved from the performance of a duty imposed upon him by law where the performance is rendered impossible by reason of causes for which he was not

responsible, where he would not for similar reasons be relieved from express contract stipulations— * * *. The duty to present them for payment is one imposed by law, not by expressed contract, and compliance therewith being impossible, plaintiff's failure to present them is not fatal to its right to recover thereon."

First National Bank of Belle Plaine v. McConnell, 14 L. R. A. (n. s.) 616-618, 114 N. W. 1128 (Minn.).

"To this point of the investigation, therefore, the familiar maxim applies 'Lex non intendit alliquid impossibile.' The reason of the law in such cases should prevail over its letter and general terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence, the presumption being indulged that the law makers intended exceptions to language which otherwise would lead to such anamolous results."

U. S. v. Kirby, 7 Wall. 482;
People v. McRoberts, 62 Ill. 38;
Fusz v. Spaunhorst, 67 Mo. 256;
St. Louis & S. F. Ry. Co. v. Evens & Howard Brick Co., 85 Mo. 307-329.

"If, then, it is impossible to comply with the condition, the impossible condition must be regarded as not intended as to this class of laborers; or, if intended, it must be void. The law requires nothing impossible—Lex non cogit ad impossibilia (Bouv. Law Dict., 'Maxims; Broom, Max. 242); and lex non intendit aliquid impossibile (Bouv. Law Dict.)—the law intends not anything impossible—are among the most venerable maxims of the law. In a statute, 'No text imposing obligations is understood to demand impossible things' (Sedg. St. Law, 191). 'Provisions in Acts of Parliament are to be expounded according to the ordinary sense of the words, unless

such construction would lead to some unreasonable result, or be inconsistent with, or contrary to, the declared or implied intention of the framer of the law, in which case the grammatical sense of the words may be modified, restricted, or extended to meet the plain policy and provision of the act' (Dwaris' St. 582). The rule is to construe the words 'in their ordinary sense, unless it would lead to absurdity or manifest injustice; and if it should so vary them as to avoid that which certainly could not have been the intention of the Legislature, we must put a reasonable construction upon the words' (Id. 587; see Donaldson v. Wood, 22 Wend. 399; Lake Shore Ry. Co. v. Roach, 80 N. Y. 339). 'All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will always, therefore, be presumed that the Legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over the letter' (U. S. v. Kirby, 7 Wall. 486). 'In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect. * * * To require a heavy and almost impossible condition to the exercise of this right, with the alternative of payment of a small sum of money, is, in effect, to demand payment of that sum' (Henderson v. Mayor of New York, 92 U. S. 268)."

In re Leong Yick Dew, 19 Fed. Rep. 490-495.

In the case of Briggs v. Spaulding, 141 U. S. 132, this Court says, on page 155 of the opinion:

"Charles T. Coit had been the first cashier of the bank and was elected a director in 1870. He was its president from June, 1879, to the date of his death, December 11, 1881. On October 3, 1881, a meeting

of the board of directors was held, at which Charles T. Coit, Francis E. Coit, Vought and Lee were present. Cushing, who had resigned on the 24th of September, was absent. It appears that at this meeting a resolution was adopted giving Charles T. Coit, the president, a leave of absence, on account of ill health, for one year. No one was elected president prior to January 10, 1882, in his place. There is no doubt of the severity of his illness, and the necessity for his absence, but it is contended that the resolutions referred to absence as president and not as director, and that no power existed to allow leave of absence to a member of the board, and so that the resolution should be limited to excuse him from attendance at the bank but not to permit him to leave the city; and it is said that if he wished to be absolved from responsibility while absent in search of restored health, he should have resigned. If such were the rule we apprehend that moneyed corporations would find extreme difficulty in obtaining proper persons to act as directors. But it is not the rule. Mr. Coit was guilty of no want of ordinary care in acting upon the leave of absence, and is not to be held because he did not resign. Invalids are permitted to indulge in the hope of recovery, and are not called upon by reason of illness to retire at once from the affairs of this world and confine themselves to preparation for their passage into another. There was here no neglectful abandonment of duty from October 3, to December 11, and the decree in favor of the administrators of Charles T. Coit was properly rendered."

Section 9-163 of the Revised Statutes of Kansas for 1923 violates the Fourteenth Amendment to the Constitution of the United States, because it creates a conclusive presumption of knowledge on account of failure to examine.

Under this statute the liability is imposed upon a director not for failure to make an examination into the affairs

of a bank, but for receiving or assenting to the reception of deposits when he knew that the bank was at the time insolvent, the liability being based upon assent to the reception of deposits when the person assenting knew the bank was insolvent. In order for a plaintiff to recover under this statute he must prove, first, that the bank was insolvent at the time the deposit was made; second, that the director or party sought to be charged knew that it was insolvent, and, third, that, knowing that it was insolvent, he received or assented to the reception of the deposit. It provides that it shall be unlawful for an officer or director to assent to the reception of the deposit by his banking institution after he shall have knowledge of the fact that it is insolvent or in failing circumstances. It does not seek to impose liability upon an officer or director of a bank for failure to examine a bank, and if it did, the officer or director charged would be excused if examination by him was impossible by reason of things beyond his control. But the statute does not seek to create any liability except where one assents when he has knowledge. Therefore, that portion of the statute which says that upon failure to discharge the duty of examining the bank, a director or officer shall, for the purpose of the act be held to have knowledge of the insolvency of such bank or that it was in failing circumstances as it was interpreted by the Supreme Court of this state, creates a conclusive presumption of knowledge. This it is not within the power of the Legislature to do. The plaintiff in error in this case had a right to show that his decedent did not have knowledge that the bank was insolvent at the time of the reception of the deposits. This right was granted to each of the other directors and officers sued, because they had made examination, but it was denied to this

plaintiff in error because the Court found that his decedent had not examined and that such failure to examine was because of his mental and physical condition which rendered him incapable of making an examination. This statute, as interpreted by our state Supreme Court, means that an officer and director charged with a violation of a statute has the right to defense on the issue of insolvency or failing circumstances, but does not have the right to set up his ignorance occasioned by failure to discharge the duty imposed by statute as a defense against the liability thereof. Under this interpretation, an officer or director may examine the bank and may show that he did not have knowledge of the insolvent condition of the bank, while another officer and director is denied the right of showing that he did not have knowledge of the condition of the bank at the time the deposit in question was received by showing that at the time of the reception of the deposits and for many months prior thereto he had been totally paralyzed, unable to exercise any of his body and mental faculties.

If this contention of the defendants in error is correct, if the position taken by the Supreme Court of the State of Kansas is correct, if the interpretation put upon this statute by the Supreme Court of the State of Kansas is correct, then no officer or director who fails to examine a bank can ever show that he did not have knowledge of the insolvency of the bank. If one is an officer and director of a bank, and the bank is perfectly solvent today, and such officer and director becomes insane and while insane the bank becomes insolvent, such insane person, if he failed to examine the bank, cannot be permitted to show that he did not examine because he was insane, but if by any chance he does make an examination of

the bank, then he may show that he did not have knowledge of its condition because that at the time he made the examination he was so insane that he could not discover the bank's condition. In these cases there was no dispute in the testimony as to the physical and mental condition of T. A. Kramer, but, because he did not examine while in this condition, he was, by the decision of the State Supreme Court, precluded from showing any set of facts which showed that he did not have knowledge that the bank was insolvent; and, because he did not examine into the affairs of the bank, the State Supreme Court held that the trial court could not take into consideration any facts or circumstances which might tend to show he did not have knowledge. In other words, because he failed to examine, the door was shut against him on the question of knowledge. If this decision stands, a trial court is bound to say, in all cases that may hereafter come before it, to a director who did not examine:

> "It is true that, nine months before the deposit was made, you examined the bank and you did not find it to be insolvent and did not know it was insolvent, but you were immediately taken seriously sick, and that sickness was of such a nature as to render you incapable mentally and physically of making any examination into the affairs of the bank or of learning anything about its condition, yet I must hold you to have had knowledge of the insolvent condition of the bank because you failed to examine, for the Supreme Court says that the statute in question means that if you have so failed, even though such failure was caused by an act of God or by causes entirely without your control, you are still conclusively bound by such failure to have knowledge."

Under this statute there can be no recovery unless the parties suing establish that the director or officer sued had knowledge of the insolvent condition of the bank when he assented to the reception of the deposit. The action is not an action on contract, but it is in the nature of an action sounding in tort. If knowledge is an essential thing to prove in order to recover under this statute, then want of knowledge is an essential thing for an officer or director to establish in order to escape liability, and, if established, the result is that he escapes liability. Therefore, knowledge and want of knowing being facts to be established, it is not within the power of the Legislature to make any fact conclusive of the ultimate fact to be established. To do so is for the Legislature to infringe on the rights of the Court and to try a case by legislative enactment. It has been repeatedly held that it is not within the power of the Legislature to create a conclusive presumption.

The Supreme Court of Kansas held that a statute which made the specification of weights in bills of lading issued by railroad companies for hay, etc., shipped over their lines conclusive evidence of the correctness of such weight was unconstitutional because denying to the companies due process of law and because wrongfully depriving the courts of the judicial power to determine the weight and sufficiency of evidence.

Railroad Company v. Simonson, 64 Kan. 802.

The Supreme Court of Arkansas held in Railway Co. v. Payne, 83 Ark. 816, 34 Am. Rep. 55, that:

> "The Legislature cannot prescribe a rule of conclusive evidence."

In Cairo Railroad Company v. Parks, 32 Ark. 131, the Court said:

> "The Legislature may declare what shall be received as evidence, but it cannot make that conclusively true which may be shown to be false; that all events if such facts are necessary to show that the substantial rights of property are to be effected and he is made to lose his property."

In Meyer v. Berlandi, 39 Minn. 438, 12 Am. St. Rep. 663, 40 N. W. 513, it was said:

> "A man cannot be thus deprived of his property without his consent. The Legislature may doubtless establish rules of evidence; but to enact a law making evidence conclusive which is not so necessarily in and of itself, and thus preclude a party from showing the truth, would be nothing short of confiscation of property and a destruction of vested rights without due process of law."

In Cooley on Constitutional Limitations, 5th Ed., 453, it is said:

> "But there are fixed bounds to the power of the Legislature over this subject which cannot be exceeded. As to what shall be evidence, and which party shall assume the burden of proof in civil cases, its authority is practically unrestricted, so long as its regulations are impartial and uniform; but it has no power to establish rules which, under pretense of of regulating the presentation of evidence, go so far as altogether to preclude a party from exhibiting his rights."

In Railroad Company v. Turnipseed, 219 U. S. 35, Justice Lurton, in the opinion, says:

> "That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal protection of the law it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense to the main fact thus presumed.
>
> "If a legislative provision not unreasonable in itself prescribing a rule of evidence, in either criminal or civil cases, does not shut out from the party affected a reasonable opportunity to submit to the jury in his defense all of the facts bearing upon the issue, there is no ground for holding that due process of law has been denied him."

In Luria v. United States, 231 U. S. 9, 58 L. Ed. 101, it was held:

> "Constitutional rights are not invaded by the declaration of Sec. 15 of the Naturalization Act of June 29, 1906, that taking up a permanent residence in a foreign country within five years after the issuance of a certificate of citizenship shall be considered prima facie evidence of the lack of intention to become a permanent citizen of the United States at the time of the application for citizenship, which, in the absence of countervailing evidence, shall be sufficient to warrant the cancellation of the certificate as fraudulent, since this provision prescribed a rule of evidence, not of substantive right."

In Railroad v. Turnipseed, 219 U. S. 35, supra, it is said:

> "The law of evidence is full of presumptions either of fact or law. The former are, of course, disputable, and the strength of any inference of one fact from proof of another depends upon the generality of the experience upon which it is founded."

To the same effect was the holding in Yee Hem v. U. S. 219; it was said:

> "A constitutional prohibition cannot be transgressed indirectly by creating a statutory presumption any more than by direct enactment."

In Zeigler v. Railroad Company, 58 Ala. 599, it was said:

> "Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty or property, in its most comprehensive sense; to be heard by testimony or otherwise; and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact, or liability, be conclusively presumed against him, this is not due process of law."

In 6 R. C. L. 453 it is said:

> "Due process of law clearly implies the right of the person affected thereby to be present before the tribunal which pronounces judgment concerning his life, liberty or property to be heard by testimony or otherwise, and to have the right of controverting by proof every material fact which bears upon the question of right in the matter involved."

In Larson v. Dickey, 42 Am. Rep. 595, page 606 of the opinion, it is said:

> "We apprehend that it is beyond the power of the Legislature to restrain a defendant in any suit from setting up a defense to an action against him. Due process of law not only requires that a party shall be properly brought into court, but that he shall have the opportunity when in court to establish any fact which, according to the usages of the common law or provisions of the Constitution, would be a protection to his property."

In 6 R. C. L. 462 it is said, speaking of the power of the Legislature:

> "As to what shall be evidence and who shall assume the burden of proof, its power is unrestricted so long as its rules are impartial and uniform, but it has no power to establish rules which, under pretense of regulating evidence, altogether prohibit a party from exhibiting his rights, since this would substantially deprive him of due process of law. A conclusive presumption cannot be established which would overrule the essential facts and thereby preclude a party from asserting the truth."

In Vega S. S. Company v. Elevator Company, 74 Am. St. Rep., page 484, it was said on page 486:

> "But is it competent for the Legislature to make the weight thus ascertained absolutely conclusive? We are of the opinion that it is not. The Legislature cannot in this manner provide for the arbitrary exercise of power so as to deprive a person of his day in court to vindicate his rights. And the law which closes his mouth absolutely when he comes into court is the same, in effect, as the law which deprives him

of his day in court. (See Cooley's Constitutional Limitations, 6th Ed., 452; 6 Am. & Eng. Ency. of Law, 2nd Ed., 1050; Graves v. Northern Pac. R. R. Co., 5 Mont. 556, 51 Am. Rep. 81; Johns v. State, 55 Md. 350; Wantlan v. White, 19 Ind. 470.)"

The statute in question was originally before the Supreme Court of Kansas on an appeal in these cases from the District Court of Butler County from a judgment sustaining a demurrer to the defendant's defense that the statute was unconstitutional as in violation of the Fourteenth Amendment to the Constitution of the United States in that it deprived the defendants of property without due process of law and denied to them equal protection of the law, and the Court held:

"In the statute (R. S. 9-163, 9-164) fixing liability of officers and directors for the unlawful reception of deposits by an insolvent bank under their control, neither the due-process clause of the Federal Constitution nor the state constitutional guaranty of the right to a jury trial is violated by the statutory declaration that upon failure of any officer or director to examine the bank he shall be held to have had knowledge of the insolvency of the bank or that it was in failing condition at the time the deposits were unlawfully received by the bank."

On page 848 of the opinion it is said:

"Is this imposition of liability for negligence and official delinquency at odds with the Fourteenth Amendment? Defendants so contend; they cite texts and authorities, including our own cases, like Railway Company v. Simonson, 64 Kan. 802, 70 Pac. 881, and Petersilie v. McLachlin, 80 Kan. 176, 101 Pac. 1014, to the effect that due process of law is denied by a statu-

tory declaration that such and such facts shall be conclusive proof of something required to be established in a judicial proceeding when such facts are not of such inherently probative character. With this general doctrine of the cases relied on there need be no quarrel; certainly, this Court has no disposition to disturb legal principal of such fundamental worth (12 C. J. 1234; 6 R. C. L. 462; 2 Wigmore on Evidence [2nd ed.] 1016 et seq.) But we cannot agree that the statutory provision under present scrutiny is justly subject to the criticism leveled against it. The provision reads: 'And upon failure of any such person (officer or director) to discharge such duty (to examine the bank) he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances.' This is not an arbitrary edict of the Legislature making evidence out of facts which are without inherent evidential significance, nor an arbitrary perversion of the rules of evidence. It is rather a statutory declaration of substantive law. We have many such rules of substantive law touching civil liability. Analogous liabilities are imposed by substantive law, even where there is little or no element of actual wrongdoing or negligence on the part of those subjected thereto. Such is the plight of stockholders of an insolvent bank. So, too, a business partner is liable, as a matter of law, for many acts and delects that may have been committed without his knowledge or assent, and even in violation of his wishes and instructions. Nothing is more common than the imposition of liability upon a principal for the acts, contracts or torts of his agent when done under color of his agency, although the principal may have been in no sense morally culpable for such acts."

Ramsey Petroleum Co. v. Adams, 119 Kan. 841.

Neither state courts or Legislatures, by giving a statute a particular name, or by the use of a particular form of words, can take away the duty of this Court to consider its real nature and effect.

> Galveston H. & S. A. R. Co. v. Texas, 210 U. S. 217;
> Choctaw O. & G. T. Co. v. Harrison, 235 U. S. 292, 59 Law ed. 234.

In support of the construction placed upon the statute in question by the Supreme Court of the State of Kansas, reliance is placed, and the decision largely based, upon the decision in Orient Ins. Co. v. Daggs, 172 U. S. 557, 43 L. ed. 552.

The statute involved in that case provided that:

> "In all suits upon policies of insurance against loss or damage by fire, hereafter issued or renewed, the defendant shall not be permitted to deny that the property insured thereby was worth at the time of the issuing of the policy the full amount insured therein on said property; and in case of total loss of the property insured the measure of damage shall be the amount for which the same was insured, less whatever depreciation in value below the amount for which the property is insured, the property may have sustained, between the time of issuing the policy and the time of the loss, and the burden of proving such depreciation shall be upon the defendant."

In that case the Court recognized the inability of the Legislature to make an ultimate question of fact conclusively proved by the proof of another fact.

The statute in question seeks to create a liability upon officers and directors of a bank where no such liability existed at common law. A reading of the sections in-

volved shows that it was intended to impose liability upon officers and directors of a bank who should receive deposits or assent to the reception of deposits, when they knew that the bank was insolvent or in failing circumstances. No liability is imposed upon one who fails to examine a bank, but the statute attempts to make a failure to examine a bank conclusive proof that the director knew at the time of the reception of the deposit in question that the bank was insolvent or in failing circumstances.

Under the interpretation put by the Supreme Court of Kansas upon Sec. 9-163 of the Revised Statutes of Kansas 1923, such statute does not make a failure to examine a bank prima facie evidence of knowledge, but makes it conclusive on the question of knowledge. In effect it says to directors and officers who may be sued under the statute:

> "Under this statute all of you who received or assented to the reception of deposits by your bank when you knew your bank was insolvent or in failing circumstances, are individually liable for all such deposits, and you who fail to examine your bank shall, for the purpose of this action, be held to have had knowledge that the bank was insolvent or in failing circumstances. It makes no difference what caused your failure to examine. You may have failed because you were, during the period involved, mentally incapacitated from making an examination. You may, during the period involved, have been confined to your bed by typhoid fever and in the delirium of typhoid fever. You may, during the time involved, have been lying unconscious from the effect of a paralytic stroke. During the period involved you may have been suffering intense physical pain and under the influence of opiates and unable to take any

part in business affairs. Acts of God may have intervened to prevent you from making an examination into the affairs of the bank. However, these things will avail you nothing. You will not be permitted to show any of these things, in order to show want of knowledge or for the purpose of showing that it was impossible for you to examine into the bank. The officers and directors who did make an examination will be permitted to show that they did not know that the bank was insolvent. They will be permitted to show that it was impossible from any examination of the bank to discover the condition of the bank. They will be permitted to put on expert witnesses to prove that no examination into the affairs of the bank, however thorough, would have disclosed the condition of the bank and may establish that it was impossible for officers and directors of a bank by any examination made or by any inquiry made to have learned of the condition of the bank at the time the deposits were received. They may be able to prove these facts by an overwhelming preponderance of the evidence, and yet the jury, under this statute, must find that you did know the bank was insolvent or in failing circumstances, while at the same time finding that it was impossible for the officers and directors of a bank, by any examination or inquiry, to have learned the condition of the bank at the time the deposits were received."

Clearly this statute bases the right to recover upon the assent to the reception of deposits by an officer or director of a bank when he knew that the bank was insolvent and then makes proof of the failure to examine conclusive as to the ultimate fact of knowledge, thus creating a conclusive presumption of one fact by proof of another fact, and giving to the officer or director failing to examine no right to rebut such presumption or to introduce any evi-

dence tending to prove that he did not have knowledge. This the Legislature cannot do, and this construction put upon this statute by the state Supreme Court violates the Fourteenth Amendment to the Constitution of the United States, by depriving the plaintiff in error of the right to show that his decedent did not know of the insolvent condition of the bank, and of showing that any failure on his part to examine was caused by act of God or by reason of things beyond his control.

We respectfully submit that in these cases there was drawn in question the validity of Sections 9-163 and 9-164 of the Statutes of the State of Kansas, on the ground that each section is repugnant to the Constitution of the United States, and the decision of the highest court of that state was in favor of the validity of each of said statutes. That the serious illness of this plaintiff in error's decedent from August, 1922, to the time of his death in July, 1923, with the deposits being made and the closing of the bank having occurred in March, 1923, place this plaintiff in error in an especially favorable position to raise the question of the constitutionality of these statutes. That the question was raised at the first opportunity and kept in the cases throughout the litigation. That the mere fact that this plaintiff in error's decedent executed the oath as director and made a codicil to his will when he was seriously ill five hundred miles from the bank, does not show that he was able to examine the bank or that he kept in touch with its affairs. That under the authority of Briggs v. Spaulding, 141 U. S. 132, it was not shown that this plaintiff in error's decedent violated his duty. That section 9-164 is repugnant to the Fourteenth Amendment to the Constitution of the United States because it made proof of the insolvency of the bank

prima facie evidence of this plaintiff in error's decedent's assent to the reception of the deposits in question. That section 9-163 is repugnant to the Fourteenth Amendment to the Constitution of the United States because it made this plaintiff in error's decedent's failure to examine the bank, at a time when it was impossible for him to examine the bank, conclusive proof of his knowledge of the insolvent condition of the bank. And that for these reasons the judgments of the Supreme Court of the State of Kansas, reversing the judgments in favor of this plaintiff in error in the trial court and remanding the causes for judgment against this plaintiff in error should be reversed.

Respectfully submitted,

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Apr. 9, 1928

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In the Supreme Court of the United States

OCTOBER TERM, 1927.

H. F. FERRY, PLAINTIFF IN ERROR, VS. ALICE M. RAMSEY, ET AL., DEFENDANTS IN ERROR.	Nos. 407, 409, 411, 413, 415, 417.
C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR, VS. ALICE M. RAMSEY, ET AL., DEFENDANTS IN ERROR.	Nos. 408, 410, 412, 414, 416, 418.

MOTION TO DISMISS WRIT OF ERROR OR IN THE ALTERNATIVE IF DISMISSAL IS NOT PROPER TO AFFIRM.

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In the Supreme Court of the United States

OCTOBER TERM, 1927.

H. F. Ferry, Plaintiff in Error, vs. Alice M. Ramsey, C. L. King and L. D. Hadley, Defendants in Error.	No. 407.
C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, Deceased, Plaintiff in Error, vs. Alice M. Ramsey, C. L. King, H. F. Ferry, et al., Defendants in Error.	No. 408.
H. F. Ferry, Plaintiff in Error, vs. W. O. James, C. L. King and L. D. Hadley, Defendants in Error.	No. 409.
C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, Deceased, Plaintiff in Error, vs. W. O. James, C. L. King, H. F. Ferry, et al., Defendants in Error.	No. 410.
H. F. Ferry, Plaintiff in Error, vs. Ramsey Petroleum Company, C. L. King, L. D. Hadley, et al., Defendants in Error.	No. 411.
C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, Plaintiff in Error, vs. Ramsey Petroleum Company, C. L. King, L. D. Hadley, et al., Defendants in Error.	No. 412.

H. F. Ferry, Plaintiff in Error,
vs.
G. L. Ramsey, C. L. King, et al., Defendants in Error. — No. 413.

C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, Deceased, Plaintiff in Error,
vs.
G. L. Ramsey, C. L. King, H. F. Ferry, et al., Defendants in Error. — No. 414.

H. F. Ferry, Plaintiff in Error,
vs.
M. R. Chastain, C. L. King, L. D. Hadley, et al., Defendants in Error. — No. 415.

C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, Deceased, Plaintiff in Error,
vs.
M. R. Chastain, C. L. King, L. D. Hadley, et al., Defendants in Error. — No. 416.

H. F. Ferry, Plaintiff in Error,
vs.
A. E. Lloyd, C. L. King and L. D. Hadley, Defendants in Error. — No. 417.

C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, deceased, Plaintiff in Error,
vs.
A. E. Lloyd, C. L. King, and H. F. Ferry, et al., Defendants in Error. — No. 418.

MOTION TO DISMISS WRIT OF ERROR OR IN THE ALTERNATIVE, TO AFFIRM.

The defendants in error, G. L. Ramsey, The Ramsey Petroleum Company, a corporation, W. O. James, M. R. Chastain, Alice M. Ramsey and A. E. Lloyd, move this Honorable Court to dismiss the writs of error, heretofore issued herein, from the Supreme Court of the State of Kansas to the Supreme Court of the United States, or in the alternative if dismissal be not proper, then to affirm the judgment and decision of the Supreme Court of the State of Kansas in the above entitled consolidated cases, for the following reasons, to-wit:

1. The law of the State of Kansas, the constitutionality of which is challenged herein by the plaintiffs in error is not in contravention of the Fourteenth Amendment to the Constitution of the United States of America, and therefore no substantial federal question is involved or raised.

2. Neither the law of the State of Kansas, the validity of which is challenged herein, nor the decision and judgment of the Supreme Court of the State of Kansas upon which error is sued, denies due process of law or equal protection of the law to the plaintiffs in error.

3. The court is without jurisdiction for want of necessary parties as plaintiffs in error for the reason that no request and refusal to join is shown and no

citation and summons and severance has been had as to the various parties defendant in the actions.

Wherefore, these moving defendants in error pray the court to either dismiss the writs of error heretofore granted in the foregoing actions, or to affirm the judgment of the Supreme Court of the State of Kansas rendered therein, respectively, and to adjudge to these moving defendants in error, respectively, just damages for the delay, and in support of this motion, brief and argument are herewith submitted.

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BRIEF ON MOTION TO DISMISS OR IN THE ALTERNATIVE IF DISMISSAL BE NOT PROPER TO AFFIRM.

STATEMENT.

Section 9-163 of the Revised Statutes of Kansas of 1923, reads as follows:

> "It shall be unlawful for any president, director, manager, cashier or other officer of any banking institution, to assent to the reception of deposits or creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and, if possible, know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted; *Provided*, Any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities" (L. 1879, ch. 47, No. 1; March 15).

Section 9-164 of the Revised Statutes of Kansas of 1923, reads as follows:

> "In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents, or managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be *prima facie* evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith" (L. 1879, ch. 47, No. 2; March 15).

Section 9-166 of the Revised Statutes of Kansas of 1923, reads as follows:

> "This act shall extend to and may be enforced by and against executors and administrators of such deceased officers, agents and managers" (L. 1879, ch. 47, No. 4).

The defendants in error, G. L. Ramsey, The Ramsey Petroleum Company, a Corporation, W. O. James, M. R. Chastain, Alice M. Ramsey and A. E. Lloyd, each as plaintiff commenced his separate action in the District Court of Butler County, Kansas, against C. L. King, H. F. Ferry, A. B. Ewing, L. D. Hadley, T. A. Kramer, G. W. Lyon and E. F. Adams, as defendants, to recover certain deposits of money al-

leged to have been made by such plaintiffs in the Butler County State Bank of El Dorado, Kansas, at a time when said bank was insolvent or in failing circumstances, of which condition such defendants had knowledge or by an examination into the affairs of said bank, which it was their duty to make, they could have ascertained such knowledge, and to the reception of which deposits the defendants were charged with having assented to; such defendants being officers and directors of said bank at the time of the reception of such deposits.

After the commencement of such actions the defendant, T. A. Kramer, died testate, and such actions were duly revived as against C. L. Harris who had been duly appointed by the Probate Court of Butler County, Kansas, as executor of the last will and testament and estate of said T. A. Kramer, and who had accepted such appointment and legally qualified as such executor.

In each of such actions, judgment was sought against the defendants and each of them for the balance remaining of the deposits so made in said bank on March 30th, 1923, with interest at six per cent from such date, and for costs and general relief, and on which date said bank was closed by order of the State Bank Commissioner of the State of Kansas and liquidation thereof commenced.

In the trial court, judgment was rendered in each action in favor of the plaintiff and against defendants, C. L. King, H. F. Ferry, L. D. Hadley, and A. B. Ewing, for the amount of the deposits remaining in

said bank on the date of the closing thereof, with six per cent interest from such date, and costs; and judgment was rendered against the plaintiff in each of said actions for costs and in favor of defendant, C. L. Harris, as such executor.

In each action the plaintiff appealed to the Supreme Court of the State of Kansas from the judgment in favor of the executor for costs, and the defendants, King, Ferry, Ewing and Hadley, separately appealed to the Supreme Court of the State of Kansas from the judgment so rendered against them.

The respective judgments rendered against the defendants, King, Ferry, Ewing and Hadley, were by the Supreme Court of the State of Kansas, affirmed.

The judgment of the trial court in favor of defendant Harris, as such executor, for costs was reversed by the Supreme Court of the State of Kansas, with directions to the trial court to render judgment in each case for the plaintiff as against the defendant Harris as executor, for the amount of the deposits remaining in said bank at the time of the closing thereof, with interest and costs.

ARGUMENT.

The Statutes of the State of Kansas under which these actions were brought is not in contravention of the Fourteenth Amendment to the Constitution of the United States of America, for the reason that such statutes constitute only an exercise of the police power inherent in the state with reference to the conducting and regulating of the banking business as carried on by banking corporations which derive their corporate powers under charter granted by the state, and when the legislature of the state determines that the public welfare and the public interest requires, it may then take the business of banking under its control insofar as that business is conducted by banking corporations deriving their authority and corporate existence and corporate powers from the state.

Noble State Bank v. *Haskell*, 219 U. S. Reports, 104.

Noble State Bank v. *Haskell*, 219 U. S. Reports, 571.

Whitman v. *National Bank of Oxford*, 176 U. S. Reports 559.

Jones National Bank v. *Yates*, 240 U. S. Reports 41.

The statutes involved are not violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States, nor does it deny to the plaintiffs in error the equal protection of the law.

The Fourteenth Amendment is concerned with the substance and not with the forms of procedure, and the due process clause does not guarantee to a citizen

of a state any particular form or method of state procedure. Its requirements are satisfied if he has reasonable notice and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceedings and the character of the rights which may be executed by it.

In the exercise of the police power, reasonable classifications may be freely applied, and such regulation is not violative of the equal protection clause merely because it is not all embracing.

The law of Kansas under consideration relates to a business affecting the public welfare of every citizen of the State of Kansas, and to a business which is impressed with a public interest and insofar as it may, provides rules of conduct or prescribed duties to be performed and obligations and liabilities for the failure to discharge such duties, yet it applies with equal uniformity to every officer named in the statute, and it applies with equal uniformity to the business to which it relates, and therefore it is not violative of the due process clause or of the equal protection of the law clause of the Fourteenth Amendment to the Constitution of the United States.

State of Missouri, ex rel Herwitz v. *North, et al*, 271 U. S. Reports 40.
Zucht v. *King, et al.*, 260 U. S. Reports 174.
Hess v. *Pawloski*, 47 Sup. Ct. Rep. 632.
Buck v. *Bell*, 47 Sup. Ct. Rep. 584.
Village of Euclid, Ohio, et al. v. *Ambler Realty Company*, 47 Sup. Ct. Rep. 114.
Tinsley v. *Anderson*, 171 U. S. Reports 101.
Williams v. *Eggleston*, 170 U. S. Reports 304.
Western Turf Association v. *Greenberg*, 204 U. S. Reports 359.

When the defendants accepted the office of director, president or cashier in the Butler County State Bank, they accepted it subject to all of the requirements, obligations, and liabilities imposed by the statute. The prohibitions and requirements of the statute are positive and mandatory. Failure to conform to the rule of conduct laid down in the statute imposed, the liability thereby created, and from which there is no escape. By the acceptance of the position of director or president or cashier, a contractual obligation was assumed to the depositor. This contractual relationship was liability to the depositor for the amount of the deposits he might make in the event of the failure of the director, or other officer named by the statute, to conform to the rule of conduct laid down in the statute.

Whitman v. *National Bank of Oxford*, 176 U. S. Reports 559.

The fact that the statute holds the director to possess knowledge of the insolvency or the failing circumstances of the bank if he fails to discharge the duty imposed by statute, and the fact that the statute provides that if the bank is insolvent or in failing circumstances the fact of such insolvency or such failing circumstances shall constitute *prima facie* evidence of knowledge and assent to the making of such deposit on the part of the officer or director so charged, does not deprive equal protection of the law nor deny due process of law.

Liability cannot exist upon the failure to discharge the duty imposed by the statute alone, or the

lack of knowledge, or ignorance on the part of the person sought to be charged, but it must be affirmatively proven that insolvency exists, or failing circumstances exist, and when insolvency or failing circumstances is established as a fact, then knowledge of that fact is held to the director if he fail to discharge the duty imposed by the statute, and the proof of such insolvency or failing circumstances constitutes *prima facie* evidence of knowledge thereof, and of assent to the making of the deposit.

The officer or director charged with violation of the statute has the right to defense on the issue of insolvency or failing circumstances, but he does not have the right to set up his ignorance occasioned by failure to discharge the duty imposed by statute as a defense against the liability thereof.

The right to conduct business in the form of a corporation is not a natural or fundamental right, but it is a creature of law, and a state in authorizing corporations to carry on business may qualify the privilege by imposing such conditions as reasonably may be deemed expedient.

It is one thing to attribute effect to the convention of parties entered into under the admonition of the law and another thing to give circumstances, maybe accidental, conclusive presumption and proof to establish and force a result against property or liberty.

Martin v. *Webb*, 110 U. S. Reports 7.
Finn v. *Brown*, 142 U. S. Reports 56-72.
Savings and Commercial Bank v. *Anderson, et al.*, 132 Pacific 755.
238 U. S. Reports 611.
Orient Insurance Company v. *Daggs*, 172 U. S. Reports 577.
Prudential Insurance Company of America v. *Cheek*, 259 U. S. Reports 530.
Yee Hem v. *U. S.*, 268 U. S. Reports 178.

Liability is to be Determined by the Law Involved.

When the State of Kansas enacted the provisions of the statute hereinbefore set forth, they laid down the yardstick by which the liability of the director or officer of the bank was to be measured, and such statute contains the rule by which to measure the right to recover from directors for loss occasioned from violation of the duty expressly imposed by the law.

McCormick v. *King*, 241 Federal 737.
Yates v. *Jones National Bank, supra.*
Thomas v. *Taylor*, 224 U. S. Reports 73.
Bowerman v. *Hamner as Receiver*, 250 U. S. Reports 504.
The Steel Trader, 10 Federal (2d) 251.

This court is without jurisdiction for want of necessary parties as plaintiffs in error.

We submit that the court is without jurisdiction in these cases for want of necessary parties. The writs of error involved herein, are from the Supreme Court of the State of Kansas to this Honorable Court. The cause of action in each and every case in which the judgment complained of was rendered against C. L. Harris, as executor of the last will and testament and estate of T. A. Kramer, deceased, and on which writ of error is sued by Harris as executor, is the same cause of action in each case on which the judgment complained of was rendered against H. F. Ferry on which writ of error is sued by Ferry, and is the same identical cause of action in each case in which judgment was rendered against C. L. King, A. B. Ewing and L. D. Hadley.

The cause of action in each case is a joint cause of action and all defendants against whom judgment was allowed are jointly liable for the full amount, and there can be but one satisfaction to the judgment holder, and any judgment debtor paying the judgment has his remedy under the statutes involved, against his co-defendant for contribution for his part thereof.

In the writs of error sued out by plaintiff in error C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, King, Ewing, Hadley and Ferry did not join as plaintiff in error, and no request and refusal to join is shown and no citation and summons and severance has been had.

In the writs of error sued out by plaintiff in error H. F. Ferry, King, Ewing, Hadley and Harris, as executor, did not join as plaintiff in error, and no request and refusal to join is shown, and no citation and summons and severance has been had.

Therefore, the writs of error are fatally defective for want of necessary parties, as a reversal herein would add largely to the burden of the defendant not joined as plaintiffs in error, placing upon them the entire burden of the judgments and relieving the plaintiff in error therefrom.

Beardsley v. *Ark. & La. Ry. Co.*, 158 U. S. Reports 123.
Masters v. *Herndon*, 10 Wall., 416.
Garcia v. *Velv*, 216 U. S. Reports 598.
Mason v. *U. S.*, 136 U. S. Reports 581.
Hardee v. *Wilson*, 146 U. S. Reports 179.
American Surety Company v. *People State of Colorado*, No. 7800, Decided Nov. 12, 1927 (Not yet reported).
Estes v. *Trabue*, 128 U. S. Reports 225.
Davis v. *Mercantile Co.*, 152 U. S. Reports 590.
Wilson v. *Kiesel*, 164 U. S. Reports 248.

Wherefore defendants in error pray the court to dismiss the writs of error herein, or in the alternative to affirm the judgment of the state court, and to adjudge to the moving parties herein, just damages for the delay, and this brief and argument is submitted in support of this motion.

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KARL M. GEDDES,
Of Eldorado, Kansas,

Attorneys for G. L. Ramsey, The Ramsey Petroleum Company, a Corporation, W. O. James, M. R. Chastain, Alice M. Ramsey, and A. E. Lloyd.

Notice of Motion.

The plaintiffs in error are hereby notified that defendants in error, G. L. Ramsey, The Ramsey Petroleum Company, a corporation, W. O. James, M. R. Chastain, Alice M. Ramsey and A. E. Lloyd, will on the 27th day of February 1928, on the convening of the Supreme Court of the United States on that day, or as soon thereafter as hearing may be had, submit for consideration of said court, the within motion and brief in support thereof, hereto attached, all of which are now served upon you herewith.

JOHN J. JONES,
B. R. LEYDIG,
KARL M. GEDDES,
Attorneys for such Defendants in Error.

In the Supreme Court of the United States

OCTOBER TERM, 1927

E. F. Payne, Plaintiff in Error,	Nos.	407
		409
vs.		411
		413
Alice M. Ramsey, et al., Defendants in Error.		415
		417
C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, Deceased, Plaintiff in Error,	Nos.	408
		410
		412
vs.		414
Alice M. Ramsey, et al., Defendants in Error.		416
		418

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

BRIEF OF DEFENDANTS IN ERROR,

G. L. Ramsey, The Ramsey Petroleum Company, a Corporation, W. O. James, M. B. Chastain, A. E. Lloyd and Alice M. Ramsey.

In Nos. 407, 409, 411, 413, 415 and 417.

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In the Supreme Court of the United States

OCTOBER TERM, 1927.

No. 407.

H. F. Ferry, Plaintiff in Error,

vs.

Alice M. Ramsey, C. L. King and L. D. Hadley, Defendants in Error.

No. 408.

C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, Deceased, Plaintiff in Error,

vs.

Alice M. Ramsey, C. L. King, H. F. Ferry, et al., Defendants in Error.

No. 409.

H. F. Ferry, Plaintiff in Error,

vs.

W. O. James, C. L. King and L. D. Hadley, Defendants in Error.

No. 410.

C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, Deceased, Plaintiff in Error,

vs.

W. O. James, C. L. King, H. F. Ferry, et al., Defendants in Error.

No. 411.

H. F. Ferry, Plaintiff in Error,

vs.

Ramsey Petroleum Company, C. L. King, L. D. Hadley, et al., Defendants in Error.

No. 412.

C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, Plaintiff in Error,

vs.

Ramsey Petroleum Company, C. L. King, L. D. Hadley, et al., Defendants in Error.

No. 413.

H. F. Ferry, Plaintiff in Error,

vs.

G. L. Ramsey, C. L. King, et al., Defendants in Error.

No. 414.

C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, Deceased, Plaintiff in Error,

vs.

G. L. Ramsey, C. L. King, H. F. Ferry, et al., Defendants in Error.

No. 415.

H. F. Ferry, Plaintiff in Error,

vs.

M. R. Chastain, C. L. King, L. D. Hadley, et al., Defendants in Error.

No. 416.

C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, Deceased, Plaintiff in Error,

vs.

M. R. Chastain, C. L. King, L. D. Hadley, et al., Defendants in Error.

No. 417.

H. F. Ferry, Plaintiff in Error,

vs.

A. E. Lloyd, C. L. King, and L. D. Hadley, Defendants in Error.

No. 418.

C. L. Harris, as Executor of the Last Will and Testament of T. A. Kramer, Deceased, Plaintiff in Error,

vs.

A. E. Lloyd, C. L. King, and H. F. Ferry, et al., Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

BRIEF OF DEFENDANTS IN ERROR,

G. L. Ramsey, The Ramsey Petroleum Company, a Corporation, W. O. James, M. R. Chastain, A. E. Lloyd and Alice M. Ramsey. In Nos. 407, 409, 411, 413, 415 and 417.

STATEMENT.

Section 1 of Article 12 of the Constitution of Kansas reads as follows:

"Corporate Powers. The legislature shall pass no special act conferring corporate powers.

Corporations may be created under general laws; but all such laws may be amended or repealed."

Section 9-101 Revised Statutes of Kansas, 1923, reads as follows:

"Incorporation and powers of banks. Any five or more persons may organize themselves into a banking corporation, and shall be permitted to carry on the business of receiving money on deposit and to allow interest thereon, giving to the person depositing credit therefor; and of buying and selling exchange, gold, silver, foreign coin, bullion, uncurrent money, bonds of the United States, and of the State of Kansas, and bonds and warrants of cities, counties, and school districts in the State of Kansas, and state, county, city, township, and school bonds issued in other states, of the United States than Kansas, of loaning money on real estate, chattel and personal security, at a rate of interest not to exceed the legal rate allowed by law; of discounting negotiable notes and of notes not negotiable, and to own a suitable building, furniture and fixtures for the transaction of its business, of the value not to exceed one-half of the capital and surplus of such bank: *Provided*, that nothing in this section shall prohibit such bank from holding and disposing of such real estate as it may acquire through the collection of debts due it."

Section 9-163 of the Revised Statutes of Kansas of 1923, reads as follows:

"It shall be unlawful for any president, director, manager, cashier or other officer of any banking institution, to assent to the reception of deposits or creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and

it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and, if possible, know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted: *Provided*, any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities" (L. 1879, Ch. 47, No. 1; March 15).

Section 9-164 of the Revised Statutes of Kansas of 1923, reads as follows:

"In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents, or managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be *prima facie* evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith" (L. 1879, Ch. 47, No. 2; March 15).

Section 9-166 of the Revised Statutes of Kansas of 1923, reads as follows:

"This act shall extend to and may be enforced by and against executors and administrators of such deceased officers, agents and managers" (L. 1879, Ch. 47, No. 4).

The defendants in error, G. L. Ramsey, The Ramsey Petroleum Company, a Corporation, W. O. James, M. R. Chastain, Alice M. Ramsey and A. E. Lloyd, each as plaintiff commenced his separate action in the District Court of Butler County, Kansas, against C. L. King, H. F. Ferry, A. B. Ewing, L. D. Hadley, T. A. Kramer, G. W. Lyon and E. F. Adams, as defendants, to recover certain deposits of money alleged to have been made by such plaintiffs in the Butler County, State Bank of El Dorado, Kansas, at a time when said bank was insolvent or in failing circumstances, of which condition such defendants had knowledge or by an examination into the affairs of said bank, which it was their duty to make, they could have ascertained such knowledge, and to the reception of which deposits the defendants were charged with having assented to; such defendants being officers and directors of said bank at the time of the reception of such deposits.

After the commencement of such actions the defendant, T. A. Kramer, died testate, and such actions were duly revived as against C. L. Harris who had been duly appointed by the Probate Court of Butler County, Kansas, as executor of the last will and testament and estate of said T. A. Kramer, and who had accepted such appointment and legally qualified as such executor.

In each of such actions, judgment was sought against the defendants and each of them for the bal-

ance remaining of the deposits so made in said bank on March 30th, 1923, with interest at six per cent from such date, and for costs and general relief, and on which date said bank was closed by order of the State Bank Commissioner of the State of Kansas and liquidation thereof commenced.

In the trial court, judgment was rendered in each action in favor of the plaintiff and against defendants, C. L. King, H. F. Ferry, L. D. Hadley, and A. B. Ewing, for the amount of the deposits remaining in said bank on the date of the closing thereof, with six per cent interest from such date, and costs; and judgment was rendered against the plaintiff in each of said actions for costs and in favor of defendant, C. L. Harris, as such executor.

In each action the plaintiff appealed to the Supreme Court of the State of Kansas from the judgment in favor of the executor for costs, and the defendants, King, Ferry, Ewing and Hadley, separately appealed to the Supreme Court of the State of Kansas from the judgment so rendered against them.

The respective judgments rendered against the defendants, King, Ferry, Ewing and Hadley, were by the Supreme Court of the State of Kansas, affirmed.

The judgment of the trial court in favor of defendant Harris, as such executor, for costs was reversed by the Supreme Court of the State of Kansas, with directions to the trial court to render judgment in each case for the plaintiff as against the defendant Harris as executor, for the amount of the deposits remaining in said bank at the time of the closing thereof, with interest and costs.

ARGUMENT.

This brief is directed to the contentions made in the brief filed herein on behalf of plaintiff in error, H. F. Ferry.

Such plaintiff in error enumerates six reasons why the Kansas law and the judgment and decision of the Supreme Court of the State of Kansas under attack herein, are in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States.

The first five specifications when analyzed may be summed up as follows: (a) Such law and such decision deprives the plaintiff in error of privileges and immunities secured to other citizens of the United States (b) Deprives the plaintiff in error of his property without due process of law (c) Denies the plaintiff in error the equal protection of the law.

The sixth specification or contention of the plaintiff in error deals solely with the question of whether or not the evidence offered in the trial court in such cases was sufficient to establish that the bank was insolvent or in failing circumstances and that the plaintiff knew that the Butler County State Bank was insolvent at the time the defendants in error made their deposits therein, and whether the evidence was sufficient to show that the plaintiff in error assented to the reception of the deposits so made.

These six cases, heretofore consolidated, come to the Supreme Court of the United States on writ of error to the Supreme Court of the State of Kansas.

The sole and only question, therefore, before this court is whether or not the Kansas law, the constitutionality of which is challenged by plaintiff in error, is in contravention of the Fourteenth Amendment to the Constitution of the United States.

The verdict of the jury rendered in the trial court was a general finding against the plaintiff in error, H. F. Ferry, on all of the issues of fact in controversy in the case.

This finding is conclusive and is abundantly sustained by the findings of the Supreme Court of the State of Kansas in its judgment and decision now questioned in these writs of error (Transcript of Record 348).

On proceedings in error in this court for the review of a judgment of the supreme court of a state, all questions of fact are to be considered as settled by the decision of the state court.

Atchison, Topeka & Santa Fe Railroad Co. v. *Matthews*, 174 U. S. 96.
Herrick v. *Railroad*, 167 U. S. 673.

The statutes of Kansas under which these actions were brought are an exercise of the police power and do not offend or contravene against the Fourteenth Amendment.

The Statutes of the State of Kansas under which these actions were brought is not in contravention of the Fourteenth Amendment to the Constitution of the

United States of America for the reason that the law embodied in such statutes constitutes only an exercise of the police power inherent in the state with reference to the conducting and regulating of the banking business as carried on by banking corporations which derive their corporate powers under charter granted by the state, and when the legislature of the state determined that the public welfare and the public interest requires, it may then take the business of banking under its control insofar as that business is conducted by banking corporations deriving their authority and corporate existence and corporate powers from the state.

Noble State Bank v. *Haskell*, 219 U. S. 104.
Noble State Bank v. *Haskell*, 219 U. S. 571.
Whitman v. *National Bank of Oxford*, 176 U. S. 559.
Jones National Bank v. *Yates*, 240 U. S. 541.

The statutes involved are not violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States nor does it deny to the plaintiff in error the equal protection of law.

This court has quite generally and on various subjects upheld state laws passed in the exercise of the police power.

In the exercise of the police power reasonable classifications may be freely applied and such regulation is not violative of the equal protection clause, nor the due process clause, merely because such classification is not all embracing and neither do such classifications deprive a citizen of privileges and immunities secured to other citizens of the United States. The law

of Kansas under consideration, relates to a business which is impressed with a public interest and which vitally affects the public welfare of every citizen of the State of Kansas. It was within the power of the State of Kansas, therefore, by proper act of its legislature in the exercise of the police power to prescribe rules of conduct to be followed by state banking corporations engaging in the banking business in Kansas, and to prescribe duties to be performed by those persons engaged in carrying on such business in a corporate capacity and to provide obligations and liabilities to be discharged and assumed by such persons for the failure to discharge the duties laid down by the statute, but it will be observed that every rule of conduct and every duty to be performed and every obligation and liability imposed for the failure to discharge such duty, applies and rests with equal uniformity to and upon every officer of all such banking corporations named in the statute, and applies with equal uniformity to the business to which the statute relates; and therefore it is not violative of the due process clause or the equal protection of the law clause of the Fourteenth Amendment to the Constitution of the United States, and neither does it deprive any citizen of any privilege or immunity held by other citizens of the United States.

The Kansas law applies generally to every state banking corporation engaging in the banking business in Kansas exactly the same and every requirement, duty, obligation or liability by it prescribed, created or imposed, applies exactly the same upon the designated officers and directors of all such banking corporations.

Under the Kansas law no citizen was required or compelled to engage in the business of operating a state banking corporation nor was he required or compelled to become an officer or director or cashier or managing agent thereof, but when the citizen did so engage in such business and in such official capacity, he did so voluntarily, but with the permission of the state and on the basis and within the limitations and subject to the regulations and liabilities prescribed in the law.

The plaintiff in error as the cashier and director of the Butler County State Bank of Eldorado, Kansas, established between himself and the depositor of his bank, a contractual obligation; this contractual obligation was liability to the depositor for the amount of the deposits he might make in the banking institution in the event of the failure of the director or other officer named by the statute, to conform to the rule of conduct laid down in the statute, and the failure to conform to this rule of conduct laid down in the statute imposed the liability created by the statute and from which there is no escape on the part of the director, cashier or other officer named in the statute.

The convention of the parties, that is as between the director or other officer named in the statute and the depositor, is one entered into under the admonition of the law.

The right to conduct business in the form of a corporation is not a natural or fundamental right, but it is a creature of law and a state in authorizing corporations to carry on business may qualify the privilege by

imposing such conditions as reasonably may be deemed expedient.

Louisville & Nashville Railroad Co. v. *Spencer Metton*, 218 U. S. 36.
State of Missouri ex rel. Herwitz v. *North, et al.*, 271 U. S. 40.
Zucht v. *King, et al.*, 260 U. S. 174.
Hess v. *Pawloski*, 274 U. S. 352.
Buck v. *Bell*, 274 U. S. 200.
Village of Euclid, Ohio, et al. v. *Ambler Realty Co.*, 272 U. S. 465.
Tinsley v. *Anderson*, 171 U. S. 101.
Williams v. *Eggleston*, 170 U. S. 304.
Western Turf Association v. *Greenburg*, 204 U. S. 359.
Magoun v. *Illinois Trust & Savings Bank*, 170 U. S. 294.
Orient Insurance Co. v. *Daggs*, 172 U. S. 557.
Minnesota Iron Co. v. *Kline*, 199 U. S. 593.
Railway Company v. *Matthews*, 165 U. S. 1.
Barbier v. *Connolly*, 113 U. S. 27.
Whitman v. *National Bank of Oxford*, 176 U. S. 559.
Prudential Insurance Company of America v. *Cheek*, 257 U. S. 530.

When a litigant has had full opportunity in the state courts to present his defense there has been a full compliance with the Fourteenth Amendment, and he has not been denied due process of law.

In all of these cases which the plaintiff in error, H. F. Ferry, asked this court to review, he was duly served with process, appeared by counsel, demurred to the pleadings and answer thereto, produced witnesses at the trial, offered his testimony, and was given every opportunity to make, and did make such defense as he desired to the trial court and the jury. When the ver-

dict went against him he appealed to the Supreme Court of the State of Kansas where he had a full and unrestricted hearing. This court, in a long line of decisions, has held that such a course of legal procedure meets all the requirements of the due process clause of the Fourteenth Amendment.

Iowa Central Railroad Co. v. *Iowa*, 160 U. S. 389.
First National Bank v. *Missouri*, 263 U. S. 640.
Missouri ex rel. Herwitz v. *North*, 271 U. S. 40.
Nashville Railway Co. v. *Schmidt*, 177 U. S. 230.
Holmes v. *Conway*, 241 U. S. 631.
Twining v. *New Jersey*, 211 U. S. 119.
Jordan v. *Massachusetts*, 225 U. S. 175.

In *Truax* v. *Corrigan*, 257 U. S. 312-332, this court said:

> "The due process clause requires that every man shall have the protection of his day in court and the benefit of the general law; a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry and renders judgment only after trial so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society."

The Kansas law under consideration is a general law and under that law the plaintiff in error, H. F. Ferry, when called to accountability to the depositors, had the benefit of every suggestion contained in the foregoing statement as regards the due process clause of the United States Constitution. He had his day in court. He was heard and permitted to make his defense and

judgment was rendered only after trial and he had the right of appeal and review of that judgment.

The presumptions of fact specified in the Kansas law is not violative of any provision of the Fourteenth Amendment to the Constitution of the United States.

The fact that the statute holds the director to possess knowledge of the insolvency or the failing circumstances of the bank if he fails to discharge the duty imposed by statute, and the fact that the statute provides that if the bank is insolvent or in failing circumstances the fact of such insolvency or such failing circumstances shall constitute *prima facie* evidence of knowledge and assent to the making of such deposit on the part of the officer or director so charged, does not deprive equal protection of the law nor deny due process of law.

Liability cannot exist upon the failure to discharge the duty imposed by the statute alone; or the lack of knowledge alone; or ignorance on the part of the person sought to be charged, alone, but it must be affirmatively proven that insolvency exists, or failing circumstances exist and when insolvency or failing circumstances is established as a fact then knowledge of such insolvency or such failing circumstances is held to the director if he had failed to discharge the duty required by the statute.

The statute also provides that when proof of insolvency or failing circumstances is established, then such fact shall constitute *prima facie* evidence of knowledge of such insolvency or such failing circumstances and assent to the reception of the deposits.

The officer or director charged with violation of the statute has the right to defense on the issue of insolvency or failing circumstances, but he does not have the right to set up his dereliction or ignorance occasioned by failure to discharge the duty imposed by statute as a defense against the liability thereof.

In analyzing the Kansas law it must be borne in mind that the basic element thereof is insolvency of the bank or failing circumstances of the bank. In the absence of insolvency or failing circumstances no cause of action accrues to the depositor and no presumption is brought into being against the officer named in the statute. The president, cashier, director or other officer named in the statute are the parties who naturally have the means of knowing the financial condition of the banking institution they are carrying on. They have access to all of its books and records and papers, and it is incumbent upon them and justly so, to examine their bank with reasonable frequency and, if possible, know its condition, and when insolvency or failing circumstances exist such persons naturally must know of the existence of that fact and when with such knowledge the banking institution is kept open from day to day and the usual ordinary business is carried on and deposits are received, they cannot be heard to say that they did not assent to the reception of such deposits, and they cannot justly complain because the statute provides that the insolvency or failing circumstances of the bank, when existing as a fact, shall constitute *prima facie* evidence that they had knowledge of such fact and assented to

the reception of such deposits or the creation of such debt.

Martin v. *Webb*, 110 U. S. 7.
Finn v. *Brown*, 142 U. S. 56-72.
Savings and Commercial Bank v. *Anderson, et al.*, 132 Pac. 755; 238 U. S. 611.
Yee Hem v. *U. S.*, 268 U. S. 178.
Campbell v. *Watson*, 50 Atl. 120-139.
Ellis, et al. v. *H. P. Gates Mercantile Co. et al.*, 60 Southern 649-651.
United Society of Shakers v. *Underwood*, 9 Bush (Ky.) 609.
Morse on Banks and Banking, 90 *et seq.*, 97 *et seq.* and 115.
Merchants Bank v. *Rudolph*, 5 Nebr. 527.
Auten v. *U. S. National Bank*, 174 U. S. 147.

That a state may by legislative act declare proof of one fact presumptive evidence of another if there is rational connection between them has been repeatedly declared as the law of the land by this court.

James-Dickinson Farm Mortgage Co., et al. vs. Harry, 273 U. S. 119.
Hawes v. *Georgia*, 258 U. S. 1.

That there is a rational connection between the fact of insolvency of a bank, or failing circumstances of a bank, and the fact of knowledge thereof and assent to the reception of deposits at that time, does not need argument or authority to support it.

Much is said in the brief of plaintiff in error with reference to the provision of the Kansas statute which provides that upon the failure to discharge the duty laid down in the statute that the officer or director named in the statute shall be held to have had knowledge of the

insolvent condition of the bank or its failing circumstances if it is in fact proven to have been insolvent or in failing circumstances and that the fact of such insolvency or failing circumstances shall be *prima facie* evidence of such knowledge and of assent to the reception of such deposits.

It is argued on behalf of plaintiff in error in this connection that the evidence neither established insolvency nor failing circumstances. We take it that discussion of what the evidence did or did not prove is not the vital question before this court for solution, because the facts found by the Supreme Court of Kansas in its decision is final on that question, but inasmuch as counsel has seen fit to lay great stress upon the evidence we direct the court's attention to some of the facts disclosed by the record.

The record discloses that during all of the time from March, 1920, down to the 30th day of March, 1923 the date of the closing of the bank, that this bank was operated in absolute violation of law and in absolute violation of the requirements made from time to time by the various bank examiners who made examination of its affairs from time to time, and that the plaintiff in error and the other officers and directors actually knew that he was conducting the bank in violation of law and in violation of the requirements of the Banking Department of the State of Kansas.

This bank was examined by a deputy bank commissioner of Kansas on March 23rd, 1920, the examination reduced to writing and various requirements made which

requirements in writing were personally received by the plaintiff in error, and at that time it had overdrafts in excess of $23,000.00 and it had excess loans in excess of $425,000.00 (Transcript 278-279).

The same examiner examined the bank in September of 1920, and at that time it still had overdrafts of an excess of $23,000.00 and excess loans in excess of $500,000.00, and at that time the examiner gave written notice and written requirements to the plaintiff in error which were by him personally received (Transcript 277-278).

The bank was again examined in March, 1921. It had overdrafts in excess of $18,000.00. It had excess loans in excess of $731,000.00 (Transcrit 276-277).

It was again examined by the deputy Bank Commissioner in September of 1921 and it had overdrafts in excess of $17,000.00 and excess loans in excess of $800,000.00. That examination was reduced to writing and requirements made by the examiner and delivered to the plaintiff in error (Transcript 274-275).

It was again examined by a deputy Bank Commissioner in January of 1922. It had overdrafts in excess of $13,000.00 and seventeen excess loans in excess of $782,000.00, and this examination was reduced to writing and requirements made by the examiner and delivered to the plaintiff in error (Transcript 271-274).

It was again examined in October of 1922 by a deputy bank commissioner, the examination reduced to writing including the requirements of the examiner and the examination disclosed that it had in excess of $18,000.00

overdrafts and excess loans in excess of $776,000.00 (Transcrit 270-271).

It was again examined in Feb. of 1923 and it had excess loans in excess of $754,000.00 and overdrafts in excess of $21,000.00 and this written examination and the written requirements made by the examiner was delivered to the plaintiff in error (Transcript 267-269).

During all of that time not a single requirement that had been made by any examiner had been complied with by the plaintiff in error in any respect, but rather the requirements of the examiner had been entirely ignored.

During this same period of time the Board of Directors of this bank had from time to time rendered to the State Bank Commissioner of the State of Kansas financial statements which showed every one of these excess loans and the overdrafts (Transcript 130-131) and the Board of Directors of this bank on January 1st, 1920 held their meeting made their report to the Bank Commissioner of the State of Kansas which disclosed a number of these excess loans. Another meeting was held in April, 1920. Another in July, 1920. Another in October, 1920. Another in January 1921; March, 1921; June-July, 1921; October, 1921; January, 1922; April, 1922; July, 1922; October, 1922 and January, 1923, and the plaintiff in error was at every one of those meetings and the report that was sent to the Bank Commissioner of Kansas showing the financial condition of the bank at the time of the meeting disclosed the deplorable condition of this bank (Transcript 130-133).

Now the plaintiff in error knew everything that these reports disclosed. He knew every requirement

that had been made by the Bank Commissioner. He knew that daily the bank was receiving deposits. He knew it was being operated in violation of law. He knew that it was hopelessly insolvent; in fact he knew everything there was to know relative to the condition of his bank from every possible standpoint, and his counsel modestly says in his brief that the plaintiff in error "never entertained the idea that the bank was insolvent * * * expected it to sustain some losses."

Under the conditions of existing facts disclosed by the record the plaintiff in error cannot be heard to say that the bank was not insolvent or in failing circumstances and neither can he be heard to say that he did not have actual knowledge of that fact nor can he be heard to say that he did not assent to the reception of every deposit that was made in the bank during that period of time.

The court will observe that he had sufficient knowledge of the condition of his bank that on the day it closed he had the sum of $1.20 in his personal account on deposit in the bank (Transcript 193).

All of the evidentiary facts herein referred to are fully found by the Supreme Court of the State of Kansas and set out in the opinion of that court (Transcript 348).

This sort of neglect of duty, of attempted asserted ignorance, of persistent violation of law and of the commands of proper constituted authority does not relieve one from the responsibilities placed upon him for such neglect of the performance of such duty,

nor for any ignorance which might be occasioned as a result of such conduct.

Various courts have dealt with that question and in that connection we quote at length from some of those decisions.

> "Directors cannot, in justice to those who deal with the bank, shut their eyes to what is going on around them. It is their duty to use ordinary diligence in ascertaining the condition of its business and to exercise reasonable control and supervision of its officers. They have something more to do than from time to time to elect the officers of the bank and to make declarations of dividends. That which they ought by proper diligence to have known as to the general course of business in the bank, they may be presumed to have known in any contest between the corporation and those who are justified by the circumstances in dealing with its officers upon the basis of that course of business." *Martin* v. *Webb*, 110 U. S. 7, *Cassidy* v. *Uhlmann*, 63 N. E. 554.
>
> "As to the degree of diligence and the extent of supervision to be exercised by directors, there can be no room for doubt under the authorities. It is such diligence and supervision as the situation and the nature of the business requires. The duty is to watch over and guard the interests committed to them. In fidelity to their oaths and to the obligations they assume, they must do all that reasonably prudent and careful men should do for the protection of the interests of others entrusted to their charge." From dissenting opinion, Justice Harlan, with whom concurred Justices Gray, Brewer and Brown, in *Briggs* v. *Spaulding*, 141 U. S. 132. The dissenting opinion quotes, with approval, *Martin* v. *Webb*, *supra*.

"One who voluntarily takes the position of director and invites confidence in that relation, undertakes, like a mandatory, with those whom he represents and for whom he acts, that he possesses at least ordinary knowledge and skill, and that he will bring them to bear in the discharge of his duties. Such is the rule applicable to public officers, to professional men and to mechanics, and such is the rule which must be applicable to every person who undertakes to act for another in a situation or employment requiring skill and knowledge; and it matters not that the service is to be rendered gratuitously. These defendants voluntarily took the position of trustees of the bank. They invited depositors to confide to them their savings and to entrust the safekeeping and management of them to their skill and prudence. They undertook, not only that they would discharge their duties with a proper care, but that they would exercise the ordinary skill and judgment requisite for the discharge of their delicate trust. * * *

The ignorance of any fact in the bank's affairs which it is their duty to know can never be set up by them in defense or exculpation for any act which the existence of that fact should have prohibited. * * *

The duties of directors are administrative, relate to supervision and direction, and when it is sought to hold them responsible for a dereliction of duty, because of which a loss occurred to stockholders and creditors, they cannot evade liability by pleading ignorance of the affairs of the institution, incompetency, or gratuitous service, or that the management of the banking business was in the hands of the cashier or other executive officer. Where there is a duty of finding out and knowing, negligent ignorance has the same effect in law as actual knowledge. While the directors of a corporation may and must, as already stated, commit the details of its business

to inferior officers, this does not absolve them from the duty of maintaining a reasonable supervision; and, if such inferior officers waste the assets of the corporation, it is conceded that the directors cannot escape liability on the ground that they did not know of the wrongdoing, provided that it appear that their ignorance was the result of a want of that care which ordinary, prudent and diligent men would exercise under similar circumstances * * *. And so, also if there is a negligent abandonment of his official duty by a director and if he leaves the entire control of the company's business to other persons and fails to exercise the proper supervision, he is liable for losses which due attention and diligence on his part might have prevented." *Horn Silver Mining Company* v. *Ryan*, 44 N. W. Rep. 56.

"The directors were not mere ornaments to the bank to lure public confidence. When they became directors, the law cast upon them the important duties of supervision and direction, which they could not delegate to the executive officers; and therefore the stockholders and depositors had the right to entrust the institution with their money, in confidence that the directors would perform their duties. When sued for losses which resulted from careless or unlawful acts and unfortunate transactions, they can never set up as a defense that they did not examine the books or accounts of the bank, knew nothing about the loans or discounts, were ignorant of banking business or that they entrusted the management and supervision of the business to the executive officers, in whom they had confidence. The welfare of the public and the interests of the banking institutions alike forbid this." *Campbell* v. *Watson*, 50 Atl. Rep. l. c. 139-140.

"By accepting the position, they assume a capacity to manage the business of the corpora-

tion and impliedly undertake to use as much diligence and care as the proper performance of the duties of their office requires, and to give the enterprise the benefit of their best care and judgment. They are bound to manage the affairs of the company with the same degree of care and prudence which is generally exercised by business men in the management of their own affairs, and the fact of the service without compensation does not permit a less degree of activity. They must be diligent and careful in performing the duties they have undertaken, and imprudence and negligence cannot be excused on the ground of ignorance or inexperience or the honesty of intention. * * * They are not permitted to evade or delegate their powers and important duties, and their supervision must be such as would enable them at all times to know the general financial condition of the corporation and to check or prevent any imprudent or dishonest conduct in officials. * * * They are bound to know the character and habits of the officers whom they employ, and they cannot be heard to say that they were ignorant of facts, the existence of which are shown by the books and papers of the corporation, and which would be known to them but for their neglect or inattention to the business; and they are responsible for loss resulting from the wrongful acts or omissions of other directors or agents, where such loss was a consequence of their own neglect of duty, either in failing to supervise the company's business with proper attention or in neglecting to use proper care in the appointment of such agents.

* * * The fact that directors of a corporation do and must commit the details of its business to executive and inferior officers does not absolve them from the duty of maintaining a reasonable supervision, and, if such officers waste the assets of the corporation, the directors, ordi-

narily, cannot escape liability on the ground that they did not know of the wrongdoing, where it is made to appear that their ignorance was the result of want of that care which ordinarily prudent and diligent men would exercise under similar circumstances. * * *

* * * Directors are charged with knowledge, when, by the exercise of ordinary care, they might have known, as it was their duty to know, that loans were made in excess of the statutory limit * * *.

* * * *With reference to banks, at least it has been said that directors are conclusively presumed to know the condition of the bank, and that, if this were not true, they would be privileged to be negligent; and the more ignorant they could manage to be about its condition, the more secure they would be from liability.*" *Ellis et al.* v. *H. P. Gates Merc. Co., et al.*, 60 So. Rep. 649-651. Thompson's Commentaries on the Law of Private Corporations, page 270.

It is stated in Bolles' Law of Banking, page 185, that:

"That tendency is to hold directors liable when they would have known the condition of their bank, had they attended to their duty."

Finn v. *Brown*, 142 U. S. Reps. 56-72.

Martin v. *Webb*, 110 U. S. Reps. 7.

"A person who holds the office of director and vice-president of a bank, and at the same time has private and personal dealings with the bank, is conclusively presumed to know (so far as the same affects his said personal dealings), the general condition and management of his bank, and to know everything of importance that occurs therein, either at the time it occurs, or soon thereafter * * *.

* * * For while we assume as a matter of fact that the defendant knew nothing of the con-

dition or management of said bank and nothing of the condition of Herman's account with the bank, yet still as a matter of law we think we must presume that he knew all about these matters. He was a director, and the vice-president of the bank, and it was his duty to have such knowledge, and therefore the law will conclusively presume that he had it (*Merchants' Bank* v. *Rudolph,* 5 Neb. 527; *United Society of Shakers* v. *Underwood,* 9 Bush. (Ky.) 609; Morse on Banks and Banking, 90 *et seq.*, 97 *et seq.* and 115). He cannot now, as against the interests of the bank and its stockholders, and perhaps its creditors, be allowed to plead ignorance and innocence, and thereby profit by his own want of knowledge, and by his own failure to do his duty as an officer of the bank. Such would be against both morals and law. Of course, we do not hold that a director is bound to know everything that transpires in a bank, and at the very time when it occurs. But we do hold that a director having personal and private dealings with his bank is bound to know (so far as the same affects his said personal dealings) the general condition and mangement of his bank, and everything of importance that occurs therein, either at the time it occurs, or soon thereafter." *Savings Bank* v. *Wulfekuhler,* 19 K. 60-63-64.

"Its knowledge and purpose is the knowledge and purpose of the bank; and here we meet the proposition upon which the defendant rests; that the directors are in law conclusively presumed to know the condition of the bank, its business, receipts and expenditures, and all the general facts which go to make up that condition and business, as shown by the entries on its regular books; and in support of this proposition are cited the cases of *Bank* v. *Rudolph,* 5 Neb. 527; *Rich* v. *Banks,* 7 Neb. 201; *Bank* v. *Wulfekuhler,* 19 Kas. 60; *Arlington* v. *Pierce,* 122 Mass. 270;

Dunn v. *St. Andrews Church,* 14 Johns, 118; *Bank* v. *Dandridge,* 12 Wheat, 65; Morse on Banks and Banking, pp. 90, 91; Bigelow on Estoppel, 1st ed., p. 549; and Green's Brice's Ultra Vires, 2nd ed., ch. 6.

In 5 Neb., *supra,* it is said:

> 'It is insisted that being the vice-president and one of the directors of the bank, he was in a situation which required him to know the condition of its business, and must be conclusively presumed to have known whether said note had been paid or not. No case directly in point has been cited, but we apprehend that the rule contended for is the correct one. In Morse on Banks and Banking, pp. 90, 91, the author thus states the rule: "The general control and government of all the affairs and transactions of the bank rests with the board of directors. For such purposes the board constitutes the corporation, and uniform usage imposes upon them the general superintendence and active management of the corporate concerns. They are bound to know what is done, beyond the merest matter of daily routine, and they are bound to know the system arranged for its doing." '

And in Bigelow, *supra,* we find the doctrine thus laid down:

> 'In accordance with the principles in the above cases, directors of corporations being bound to know the proceedings of the body, cannot escape an estoppel by the allegation of ignorance.' "

National Bank v. *Drake,* 29 Kas. 325-326.
Auten v. *U. S. National Bank,* 174 U. S. 147-148.

"The law imposes certain duties which are obligatory and from which a director cannot be

excused. A failure to perform duties which the law imposes makes the director who wilfully neglects such duties after being duly qualified in office liable in civil damages to the person or persons injured by such gross neglect. * * * The directors are liable in failing to perform duties required and imposed by the statute, but it must be inferred that their acts were unintentional." Megee on Banks and Banking, Third Ed., 98-99.

"They are bound to know all that is done beyond the merest matter of routine." MaGee on Banks and Banking, Third Ed., page 96.

The statute contains within itself a declaration of substantive law.

That provision of the statute under attack which reads: "and upon failure of any such person to discharge such duties, he shall for the purpose of this act be held to have had knowledge of the insolvency of such bank or that it was in failing circumstances" is merely a declaration of substantive law.

The duty is for the director or other officer named in the statute, to carefully, frequently and exhaustively examine into the affairs of the bank of which he is such officer, and to know its condition if possible to know it.

Substantive law is that part of the law which creates, defines and regulates rights as opposed to adjective or remedial law which prescribes the method of enforcing rights or obtaining redress for their invasion.

Mix v. *Board of County Commissioners*, 18 Idaho 695; 32 L. R. A. (n. s.) 534.

Black's Law Dictionary Under Substantive Law, page 1132.

The statute imposed on the director, or other officer named in the statute, a duty to be performed and it contained within itself certain prohibitions. The reason the statute imposed a duty and prohibited the doing of certain other acts was the better protection and benefit of the depositors who entrusted their money to the bank relying upon the ability, fidelity and vigilance of the officers and directors of the bank.

The engagement of the director or other officer charged, therefore, falls within the rule:

> "That where the statute prohibits the doing of an act or imposes a duty on one for the benefit and protection of individuals, if he disobeys the prohibitions, or neglects to perform the duty, he is liable to those for whose protection the statute was enacted."
>
> *Baxter* v. *Coughlan, et al.*, 72 N. W. 797.

The plaintiff in error stands upon a different footing and in a different relationship as regards the application of the Fourteenth Amendment to the Constitution, from the footing and relationship of a natural citizen.

At the time the plaintiff assumed the office of director in the bank and at all times since, he had under the law of Kansas, no natural right of a citizen to engage in the banking business.

He could only engage in the banking business in a corporate capacity in accordance with the terms and conditions prescribed by the law of the State of Kansas and under the limitations and restrictions and subject to the obligations, liabilities and requirements of that law. Sections 9-101, 9-163, 9-164, 9-166 contains the pertinent provisions under which he could so engage in conducting a banking institution.

He stands before the court as regards his contentions here made, not as a natural citizen, but, rather as an official citizen, a member of a corporate citizen, but with his rights, privileges, obligations, duties and liabilities circumscribed by the provisions of the law laid down in the quoted sections and this official capacity is one that he voluntarily assumed in order that he might be allowed to engage in the conducting of a banking institution under that law.

Blake v. *McClung*, 172 U. S. 239.

We submit that under the authority of that case, that when he invokes the protection of the Fourteenth Amendment to the Constitution he invokes it upon an entirely different footing and basis from that of a natural citizen.

The liability of the officer charged is to be determined by the law involved.

The Kansas law under consideration was placed upon the statute books of Kansas in 1879, and when the Butler County State Bank of El Dorado, Kansas, procured from the State of Kansas a charter of incorporation authorizing it to transact a banking business in such corporate capacity, that law prescribed the rules of conduct to be observed, the duties to be performed, the obligations and liabilities to be imposed for the violation of the mandate of that statute, and when the plaintiff in error, Ferry, voluntarily became a director and cashier of the bank, he immediately was charged with conformity to the rules of conduct,

prescribed the discharge of the duties provided, and under the express provision that his violation of the mandate of the statute would cast upon him the obligations and liabilities provided thereby to the depositor. His engagement entered into with the depositor was one made under the admonition of the law and his duty was to know the condition of his bank and not to receive or permit deposits to be received if the banking corporation was insolvent or in failing circumstances and that he might know its condition in this respect it was his duty to examine into the affairs of the bank diligently, frequently, so that he might have knowledge of the exact condition.

When the State of Kansas enacted the provisions of the statute hereinbefore set forth, they laid down the yardstick by which the director or officer of the bank was to be measured and such statute contains the rule and the exclusive rule by which to measure the right to recover from directors for loss occasioned from the violation of the duty and requirements expressly imposed by the law.

Orient Insurance Company v. *Daggs, supra.*
McCormick v. *King,* 241 Federal 737.
Yates v. *Jones National Bank, supra.*
Thomas v. *Taylor,* 224 U. S. 73.
Bowerman v. *Hamner, as Receiver,* 250 U. S. 504.
The Steel Trader, 10 Federal (2d) 251.

Wherefore these defendants in error pray the court to affirm the judgment of the Supreme Court of

the State of Kansas and to adjudge to them just damages for the delay.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

Nos. 407-418.—October Term, 1927.

H. F. Ferry, Plaintiff in Error,
407 vs.
Alice M. Ramsey, C. L. King, and L. D. Hadley.

Same,
409 vs.
W. O. James, C. L. King, and L. D. Hadley.

Same,
411 vs.
Ramsey Petroleum Company, C. L. King, L. D. Hadley, et al.

Same,
413 vs.
G. L. Ramsey, C. L. King, et al.

Same,
415 vs.
M. R. Chastain, C. L. King, L. D. Hadley, et al.

Same,
417 vs.
A. L. Lloyd, C. L. King, and L. D. Hadley.

C. L. Harris, Executor of the Will of T. A. Kramer, Plaintiff in Error,
408 vs.
Alice M. Ramsey, C. L. King, H. F. Ferry, et al.

Same,
410 vs.
W. O. James, C. L. King, H. F. Ferry, et al.

Same,
412 vs.
Ramsey Petroleum Company, C. L. King, L. D. Hadley, et al.

Same,
414 vs.
G. L. Ramsey, C. L. King, H. F. Ferry, et al.

Same,
416 vs.
M. R. Chastain, C. L. King, H. F. Ferry, et al.

Same,
418 vs.
A. L. Lloyd, C. L. King, H. F. Ferry, et al.

} In Error to the Supreme Court of the State of Kansas.

[May 14, 1928.]

Mr. Justice Holmes delivered the opinion of the Court.

These writs of error are brought by Ferry, formerly a director of the Butler County State Bank, of Kansas, and by the executor

of a deceased director, to set aside judgments against them in suits by depositors in the bank, on the ground that the statutes of Kansas purporting to establish the directors' liability were contrary to the Fourteenth Amendment of the Constitution of the United States. The statutes were upheld by the State Court. 122 Kans. 675. *Ibid.* 691.

The plaintiffs, (the defendants in error,) made deposits in the bank at a time when it was insolvent but had not closed its doors. The statutes under which the directors were held liable to depositors and which are attacked here are Revised Statutes of Kansas, 1923, Chapter 9, ¶¶ 163, 164. The former of these makes it unlawful for any director to assent to the reception of deposits by his bank after he shall have had knowledge of the fact that it is insolvent. The law makes it the duty of the directors to examine into the affairs of the bank, and, if possible, to know its condition, and in case of his failure to do as required, he is to be held to have had knowledge of the insolvency of the bank, and is made 'individually responsible for such deposits so received.' By 9-164, in suits for deposits against officers "the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received . . . shall be prima facie evidence of such knowledge and assent to such deposit . . . on the part of such officer . . . so charged therewith." It is said that 163 denies due process of law by creating a conclusive presumption of knowledge from ignorance and by implying that the director knowingly assented to a deposit that he should not have received, of which in fact he knew nothing. As to 164 it is said that facts are made prima facie evidence of other facts that they have no rational tendency to prove. The law as construed by the Supreme Court of Kansas meets its severest test in the cases against the executor of Kramer, because Kramer, although not so ignorant or incapable of knowledge as thought by the Court of first instance, was seriously ill at the time of the deposits and seemed to have much to be said in his behalf, if the actual state of his knowledge had any relevancy as an excuse.

It is said that the liability is founded by the statute upon the directors' assent to the deposit and that when this is the ground the assent cannot be proved by artificial presumptions that have no warrant from experience. But the short answer is that the statute might have made the directors personally liable to depositors in

every case, if it had been so minded, and that if it had purported to do so, whoever accepted the office would assume the risk. The statute in short imposed a liability that was less than might have been imposed, and that being so, the thing to be considered is the result reached, not the possibly inartificial or clumsy way of reaching it. If without any mention of assent or presumptions or prima facie evidence the statute had said: Every director of a bank shall be personally liable to depositors for every deposit accepted by the bank after it has become insolvent all objections would be met by the answer, You took the office on those terms. The statute would be none the worse if it allowed a defence in the single case of the defendants having made an honest examination and having been led to believe that the bank was solvent. The mention of assent and evidence of knowledge cannot be pressed to conclusions that the statute manifestly does not allow. The conclusions that, as construed by the State Court, it does impose, it imposes however much it may cut down the significance of the assent or knowledge to which it refers. As a matter of law there is nothing new in charging a party with knowledge of what it is his duty to know, in this case the insolvency of the bank, or with assent to deposits that he must expect while the bank's doors remain open. But the essential thing is that whether in a roundabout or a perfectly natural way the statute has said if you take the office you must take the consequences of knowledge whether you have it or not. In most contracts men take the risk of events over which they have imperfect or no control. The acceptance of a directorship is as voluntary an act as a contract.

The Supreme Court of Kansas affirmed judgments against Ferry and reversed judgments in favor of the executor of Kramer based on Kramer's incapacity to know of or assent to the deposits in question and ordered judgments against him. In so doing it violated no provision of the Constitution of the United States.

Judgments affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.